

Central Law Journal.

ST. LOUIS, MO., DECEMBER 22, 1905.

ANNOUNCEMENT.

As the present volume of the CENTRAL LAW JOURNAL is drawing to a close, we desire to make certain announcements for the new year.

We take great pleasure in announcing that the editorial staff of the CENTRAL LAW JOURNAL has been augmented by the addition of Mr. William A. Gardner, formerly a member of one of the largest law firms in Chicago, but who recently removed to Springfield, Missouri, to take care of large interests there and to improve the health of his family. He is now permanently located in St. Louis, and will assume the complete direction of the CENTRAL LAW JOURNAL as Editor in Chief. Mr. Alexander H. Robbins, the former editor, is still retained as managing editor. Mr. Robbins will still wield the pen, both in the preparation of editorials and annotations. To fully carry out our earnest purpose to make the CENTRAL LAW JOURNAL the most original as well as the most valuable law journal in the United States it has become absolutely necessary to maintain a competent editorial staff employed to give their whole time to the interests of our subscribers.

Another gratifying announcement, from the publisher's standpoint at least, is the constant increase in our subscription list. This is due, in large measure, to the kind words of testimony and effort put forth by some of our enthusiastic subscribers. We desire here to publicly acknowledge our gratitude to certain subscribers in North Dakota, Iowa and South Carolina, who by their own efforts, without suggestion from us, added so many names to our list of subscribers. We shall be glad to make it a matter of profit as well as of gratitude to those of our subscribers who think well enough of the CENTRAL LAW JOURNAL to introduce it into other offices by their own efforts.

We contemplate no change in the different departments of the CENTRAL LAW JOURNAL. The plan of the JOURNAL is that conceived

at the time of its origin by the Hon. John F. Dillon, and so well is that plan appreciated that any attempt to change it meets with instant disapproval from our subscribers. Our purpose next year therefore will be to increase the value and efficiency of the CENTRAL LAW JOURNAL along the same lines so long familiar to the profession.

We have one request to make of our subscribers,—that they keep us advised of interesting points of law arising in their practice. Send us the query hypothetically propounded, or better still send the query and your view of the proper solution of the question of law involved. Contributions of this character will entail little labor on the part of each correspondent but would in the aggregate be of great value to the profession in pointing the way to a solution of questions of law on which the books seem to be silent.

REPEAL OF ORDINANCES BY STATUTE.

It is a general rule that municipal ordinances must not be inconsistent with the general statutes of the state. How far the cases go in the determination of what amounts to irreconcileable inconsistency we shall, at some future time, endeavor to indicate.

The following question recently arose in a well known city court: Certain ordinances had been long in force regulating the sale and inspection of milk. Thereupon a state statute was passed creating a dairy commissioner, regulating the sale, and fixing the standards for dairy products, including milk. The state statute further attempted to repeal "any and all laws and parts of laws of whatsoever kind or nature inconsistent with the provisions of this act," and closed with an emergency clause. At the time this statute took effect a large number of prosecutions were pending under the city ordinances, and the defendants contended that the statute repealed the ordinances both expressly and by necessary implication; that the ordinances being repealed, the prosecution must fail. It was true, they said, that there was a city ordinance providing that "no offense committed and no fine, forfeiture or penalty incurred, previous to the repeal of any ordinance, shall be affected or discharged by such repeal;" but the municipal assembly could not validly prescribe as

to the effects of a legislative repeal; the municipal assembly could not bind the legislature. It was further true, that a state statute provided that no repeal of a statute should affect any offense previously committed or penalty incurred; but this had no application to ordinances, because an ordinance is not a statute; citing *Barton v. Gadsden*, 79 Ala. 495; *Rutherford v. Swink*, 96 Tenn. 564, and *Denning v. Yont*, 62 Kan. 217. The cases did not reach the appellate court, being settled by agreement of counsel; but the argument of counsel suggests an interesting answer, which may or may not be sound.

It is settled law that the legislature cannot expressly assume the functions of the municipal assembly. It cannot directly enact an ordinance, nor can it expressly repeal one. *Smith, Municipal Corp.*, Sec. 544. But it can legislate with supreme authority over the state, including cities; and whatever ordinance is inconsistent with the supreme law falls to the ground. This, however, is an implied repeal; and by all the authorities implied repeals are to be narrowly and strictly construed. The general rule is, further, that statutes are to be prospectively construed, as applying to the future rather than to the past. The constitution of most states prohibits retrospective legislation. Now the ordinance providing that no offense or penalty accrued under an existing ordinance, should be released by the repeal of that ordinance, is general. It forms a part of every ordinance just as much as if it were written expressly into it. That provision of the ordinance in question is not in terms attempted to be repealed. The charter of the city in this particular case conferred the implied power upon the assembly to make such a provision; and the charter is law of equal dignity with the statute.

If then the statute can only operate as an implied repeal, and an implied repeal is to be construed as narrowly as possible; and if, further, the statute is to be construed prospectively, as applying to future cases, and not to past, is it necessary to conclude that the ordinance and the saving clause thereof as to past offenses, is repealed by reason of irreconcilable inconsistency with the statute, so as to avail these defendants?

NOTES OF IMPORTANT DECISIONS.

DEED—CONSTRUCTION OF RESTRICTIONS IN A DEED.—In the case of *Hemsley v. Marlborough House Co.*, 61 Atl. Rep. 455, decided in Court of Errors and Appeals of New Jersey recently, the court held that the restriction in a deed that no building shall be erected on the lot conveyed "more than 200 feet, without the consent of [grantor] or her heirs, beyond the souther-most boundary line of the lot of S., * * * nor within a space of 15 feet from the westerly side of * * * P. Place," means that no building shall be erected within the two limits prescribed without the consent of the grantor or her heirs. The process of the reasoning of the court is interesting in showing that though such restrictions are binding equity will relieve the parties so bound rather than allow a gross injustice to be inflicted. The court said:

"Another contention advanced by counsel for the defendant is that the defendant company had no knowledge at the time it purchased the female academy tract that these restrictive covenants in the deed to that society had been inserted in it for the benefit of the Dissston Cottage property, and therefore is not affected by them. The answer to this contention seems to us to be that knowledge of this fact was not necessary in order to bind the defendant company. It had notice of the existence of these restrictions, for they appear in the direct chain of its title, and, having notice, it is chargeable with the pertinent facts which inquiry would have revealed to it—in other words, with the purpose for which these restrictions were inserted in the deed.

But although we reach the conclusion that the right to enforce these restrictive covenants against the owner of the defendant's property passed to the complainant, as the grantee of the Dissston Cottage plot, we do not consider that it would be equitable at this time to grant a mandatory injunction against the defendant company, requiring it to tear down so much of its hotel building as extends beyond the prescribed lines. Apparently the violations of the restrictive covenants in this respect were accidental. No objection to this feature of its construction seems to have been made by the complainant during the process of its erection. The injury inflicted upon the complainant's property by these infractions of the covenant is almost infinitesimal, and the loss which would be entailed upon the defendant by tearing away these portions of its building would be very considerable." The fact that no objection was made while the building was in course of erection, must have been regarded as amounting to consent by the court and it would seem as though it should have said so in so many words, however the opinion did justice and that is the main thing.

LIBERTY OF CONTRACT.

1. *The Right or Liberty to Contract.*—There are certain fundamental rights of the citizen recognized in the organic law of all the states. Among these is the right to liberty, and to acquire, possess and protect property. The constitutional provision which declares that every person has an inalienable right to liberty, and to acquire, possess and protect property, guarantees to them the right to make and enforce all proper contracts, and to employ in their business such persons and such lawful means as they choose, free from restraints except such as are necessary for the common welfare.¹ "Liberty," it is said, "includes the right to make and enforce contracts, because the right to make and enforce contracts is included in the right to acquire property."² And again, "the right to contract a debt or other personal obligation is included in the right to liberty."³ And "the right to a sustenance, and to acquire property and to make treaties in relation thereto, is liberty in the constitutional sense."⁴ "A freeman," it has been said, "may buy and sell at his pleasure. This right is not of society, but from nature. He never gave it up. It would be amusing to see a man hunting through our law books for authority to buy or sell or make a bargain."⁵ Contracts and compacts have been entered into between men and nations during all times from the earliest dawn of history. The right and liberty of contract is one of the inherent and inalienable rights of man, fully secured and protected by our constitutions.⁶

This right may be restrained only so far as it is necessary for the common welfare, and the equal protection and benefit of the people. "It must not be forgotten," to quote from an English case, "that you are not to extend arbitrarily those rules which say that a given contract is void as being against public policy, because if there is one thing which more than another public policy requires it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts when entered into freely and voluntarily shall be held sacred and shall be enforced by courts of justice. Therefore, you have this para-

mount public policy to consider that you are not lightly to interfere with this freedom of contract."⁷ Free will in making private contracts, and even in greater degree in refusing to make them, is one of the most important and sacred of the individual rights intended to be protected by the constitution.⁸ "Freedom of contract is unknown to primitive society, but is at once an incident, and an evidence of a relatively highly advanced civilization. The progression from the old system of rights and duties dependent upon a fixed status to the system of rights and duties arising from the free contract of the individual is a distinct social advance from one great landmark of jurisprudence to another. In a modern industrial state this freedom of individual contract, representing a long and toilsome progressive social development, becomes essential in any rational conception of individual liberty. * * * This fundamental right, however, as all other individual rights, must conform to and yield to the necessities of the social state. It is the law which gives its sanction to the obligation of the contract, and which is necessarily involved in the conception of an enforceable contract. Liberty of contract, therefore, consists in having the ability at will to make or to abstain from making a binding obligation, enforced by the sanction of the law."⁹ Upon this subject a quotation from the *Irish Law Times*, which is given in the note, seems peculiarly appropriate, and at the same time to embrace about all that can properly be said on this subject.¹⁰

¹ Printing, etc., Co. v. Sampson, L. R. 19 Eq. Cases, 462, 463. Justice Shiras makes use of the above quotation in Baltimore, etc., R. R. Co. v. Voigt, 176 U. S. 498, 505.

² State v. Krentzberg, 114 Wis. 530, 90 N. W. Rep. 1098, 58 L. R. A. 748, 753.

³ *Per* Frederick N. Judson, Esq., 25 Am. Law Review, 871.

⁴ Restraint of contract has, in a great majority of cases, one of three results: it leaves the persons for whose benefit it is imposed in exactly the same position as they occupied before; or, it leaves them in a worse position; or, where the proposed restraint applies to a class of persons among whom the original conditions of contracting vary, it leaves the position of some unchanged, while injuring that of others. Most cases of interference with contract fall under the latter head. Attempts to restrain contracts will, nowadays at least, be only either wholly ineffectual or partly ineffectual and partly injurious—legislative science being now, it may be hoped, sufficiently enlightened to refuse its sanction to attempts at restraint of contract of the wholly injurious order. A typical specimen of an attempt of the latter kind is afforded by the usury laws. * * * The object of these laws must be defined to be either the protection of borrowers generally, or specially the protection of improvident borrowers. So far as regards what may be called the legitimate borrower, the man in want of capital to apply to a productive purpose, it seems too clear for argument that he is best served by being allowed to borrow money at whatever rate of interest will leave him a sufficient margin of profit; and, it is easily to imagine, as Bentham did, a hypothetical but highly probable case, in which his personal inability

¹ State v. Bateman, 7 Ohio N. P. R. 487; Commonwealth v. Perry, 155 Mass. 117.

² Matthews v. People, 202 Ill. 389.

³ Kuhn v. Common Council, 70 Mich. 534.

⁴ Republic Iron, etc., Co. v. State, 160 Ind. 379.

⁵ Beebe v. State, 6 Ind. 501, 512.

⁶ Palmer & Crawford v. Tingle, 55 Ohio St. 423; Ritchie v. People, 154 Ill. 98; Forrer v. People, 141 Ill. 171; Braceville Coal Co. v. People, 147 Ill. 66; Great Southern Hotel Co. v. Jones, 193 U. S. 532, 548, 550; State v. Stewart, 59 Vt. 273; State v. Goodwill, 33 W. Va. 179; *In re Jacobs*, 98 N. Y. 98; Slaughter House Cases, 16 Wall. 36; Godcharles v. Wigeman, 113 Pa. St. 481; Commonwealth v. Perry, 155 Mass. 117; Williams v. Fears, 179 U. S. 270; Holden v. Hardy, 169 U. S. 366; Allgeyer v. Louisiana, 165 U. S. 778.

2. Business Relations Must be Voluntary—Exceptions.—“It is a part of every man’s civil rights,” said Judge Cooley, “that he be left at liberty to refuse business relations with any person whomsoever, whether the refusal rests upon reason, or is the result of whim, caprice, prejudice or malice. With his reasons neither the public nor third persons have any legal con-

to borrow money at five per cent and his statutory disability from borrowing it at six or seven per cent would ultimately compel him to submit to a reduction of his profits equal to a rate of ten or twelve per cent. Probably the legislators of the last century were themselves sensible to the force of this argument even while they maintained the usury laws, but they were so bent on protecting the spendthrift borrower from himself that they were willing to sacrifice the thrifty borrower to him. The paternal legislator has been distinguished in all ages by his indifference to the interests of his best conducted children. What makes the usury laws so typical a specimen of the worst kind of interference with contract is, that they not only failed to protect the class whom they were designed to protect, but actually exposed them to still greater dangers. The spendthrift, as his name almost implies, is a man of many contracts—of many improvident contracts, and legislation was dealing with only one of them. The legislature seemed to have forgotten that the spendthrift did not borrow money to look at, but to spend on the purchase of a variety of more or less useless and superfluous commodities; and where, as Bentham pertinently asked, was the reason of limiting the money dealer’s profits on the commodity in which he dealt, while the dealers in every other form of commodity were allowed to make what profits they could? In the result it is clear that they would appropriate all the money-dealer’s profit in excess of the legal rate of interest, and more. The less ready money the spendthrift could raise, the more and the longer credit it was necessary for him to obtain; while, on the other hand, the more and the longer credit his tradesmen were called upon to give him, the higher, naturally, was the interest they were compelled, or at any rate enabled, to charge him upon the value of his goods. We have dwelt thus long upon this now almost forgotten legislation, because it illustrates in an extreme form the almost invariable cause of the failure of all legislation in restraint of contract. Such legislation generally fails because it does not go far enough; and it does not go far enough because it cannot. It merely aims at imposing restraints upon one of many modes in which the needs of one party find satisfaction from the services of another; and it confines itself to this because it would be impossible to anticipate all the modes in which the parties can bring themselves together; and if it were possible, the attempt to intercept them all would be too intolerably oppressive even for paternal legislation. In some cases it is impossible, in these days at least, for law to advance a single step farther than the bare and necessarily idle restriction upon a single form of contract, because the very next step would bring legislation into collision with principles too firmly established to be assailed. It is easy to see how short must be the arm of a lawgiver who wishes to prohibit a particular form of contract, and yet cannot venture to touch such things as the price of commodities or the rate of wages. In many cases the first condition even of apparent success of restraining contract would depend

cern.”¹¹ To enjoy his liberty to the fullest extent the citizen’s business relations with others must be voluntary. To compel an individual to enter into business relations with another against his will can be justified only on the ground of public necessity. There can be no justification, however, for state interference with the business relations of persons engaged in pursuits of a purely private character. But where the business is one of a *quasi*-public character, the person who adopts and follows it, may be compelled by the state to enter into business relations with all. Thus the common carrier must carry for all; the innkeeper, so far as possible, must provide for all who come to him. The reasons for these exceptions to the general rule—that the citizen’s business relations must be voluntary—define, in a way, the limitations of legislative power in dealing with other kinds of business. Common carriers, like railroads, ferries, street car companies, and the like, enjoy special privileges or franchises in the prosecution of their business, which are not enjoyed by all other persons or corporations. Since these privileges are conferred by the state upon the person or persons enjoying them, it seems fair that they should submit to reasonable regulations in the use of them. As only those persons who have been specially favored by the state may prosecute the business of a common carrier it seems nothing more than right and proper that they should be required to carry all persons under reasonable regulations. The same reasons for the state’s right to regulate the business of common carriers do not exist, however, in the case of innkeepers, since they enjoy no such rights or privileges as the carrier does. The real ground for the state’s interference seems to be that the business of innkeeping is one “affected with a public interest.” “Property,” it has been said, “does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. When, therefore,

upon the ultimate assumption of power to fix prices or to regulate wages. * * * To sum up, legislation in restraint of contract may be resisted on two grounds—from the point of view of its economical results to the community, and from the point of view of its effect on the class for whose benefit it is designed. It ought not to be resisted from the point of view of the community, because the argument on this head can never be conclusive, and can at best only disclose a conflict of considerations which will always have different weight for different minds. It ought to be resisted from the point of view of the persons sought to be benefited, and on the ground that it will not so benefit them. It will fail to benefit them, because it will fail in the vast majority of cases to coerce those other persons upon whose coercion this benefit depends. And, finally, it will fail to coerce those persons, because the right of contract, which legislation seeks to restrict, in most cases turns out to be inseparably connected with certain other rights before which legislation is compelled to pause.” 9 Irish Law Times, 525-570.

¹¹ Cooley, *Torts*, 278.

one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created."¹² Upon this principle the courts have held that the state may, within reasonable bounds, regulate the business of innkeepers, and thus affect their relations with the public.¹³

3. *Powers of Parliament, Congress and State Legislatures to Control the Freedom of Contract.*—In England parliament probably has unlimited power to impose restrictions on the freedom of individuals to enter into contracts; with us there is a limit to the powers of congress and of the state legislatures in this respect. The United States, or a state, in the exercise of the police power, may regulate or prohibit the making of contracts when, in the judgment of congress or the legislatures, the public good requires the restriction, and ordinarily, the courts will not review their judgment as to the propriety of the law. There is, however, a limitation to the police power of the state. The federal constitution protects the vested rights of the people, and prohibits congress and the state legislatures from passing any law which shall deprive a citizen of his liberty or property without due process of law. The courts are bound to enforce the constitution, even as against the legislatures, as it is the supreme law of the land; and if the legislatures, assuming to act under the police power, should pass a statute depriving a person of the right to make contracts, when the public good clearly does not require such interference, the statute would be unconstitutional and void, and the courts would be bound to hold it.

4. *The Privilege of Contracting is Both a Liberty and a Property Right.*—The privilege of making and entering into contracts is more than a mere license or liberty. It is a property right.¹⁴ It is an essential incident to the acquisition and protection of property, and is such right as the legislature may not arbitrarily and without sufficient cause either abridge or take away.¹⁵ Property does not consist merely of the title and possession. In its broader sense, property is not the physical thing which may be the subject of ownership,

but is the right of dominion, possession and power of disposition which may be acquired over it; and the right of property, preserved by the constitution, is the right not only to possess and enjoy it, but also to acquire it in any lawful mode, or by following any lawful industrial pursuit which the citizen, in the exercise of the liberty guaranteed, may choose to adopt.¹⁶ Property includes the right to make any legal use of it, as well as the right to pledge or mortgage it, or to sell and transfer it. The right to contract a debt or other personal obligation is included in the right to liberty; and the right to contract a debt, or to enter into a bond or other writing obligatory, is also a right of property.¹⁷ Signing bonds for other parties may be the result of friendship, or because of business interest, but the right to pledge one's estate is as much a right of property as either the title or possession. The right to sign a bond, or to enter into any other contract, cannot be made to depend upon the business in which one is engaged. "The privilege of contracting," it has been said, "is both a liberty and a property right, and if A is denied the right to contract and acquire property in the manner which he has hitherto enjoyed under the law, and which B, C and D are still allowed by the law to enjoy, it is clear that he is deprived of both liberty and property to the extent that he is thus denied the right to contract."¹⁸ The legislature, therefore, cannot prevent persons who are *sui juris* from making their own contracts. The laborer may sell his labor for what he thinks best, whether for money or goods, just as his employer may sell his iron or coal, and a law which proposes to prevent him from so doing would be an infringement of his constitutional privileges.¹⁹ As an incident to the right to acquire property, the liberty to enter into contracts by which labor may be employed, in such way as the laborer may deem most beneficial to himself, and of others to employ such labor, is included, as the authorities agree, in the constitutional guaranty. Laws, to stand, when brought to the test of the constitution, must preserve the right of each citizen to pursue his own advancement and happiness in his own way, subject only to the restraints necessary to secure the same rights to others.²⁰

5. *The Right to Acquire Property Includes the Right to Contract.*—The right to acquire, sell, possess and protect property, and to pursue happiness, necessarily includes the right to make reasonable contracts which shall be under the protection of the law.²¹ Of all the "rights of per-

¹² *Munn v. Illinois*, 94 U. S. 113, 126.

¹³ *Munn v. Illinois*, *supra*, 129, citing, *Mobile v. Yuiile*, 3 Ala. 140. See also *Budd v. New York*, 143 U. S. 545, 153 U. S. 403.

¹⁴ *Matthews v. People*, 202 Ill. 389, 67 N. E. Rep. 28.

¹⁵ *Cleveland v. Clement, etc., Co.*, 59 L. R. A. 775, 781; *State v. Goodwill*, 33 W. Va. 179; *Palmer v. Tingle*, 55 Ohio St. 423, 45 N. E. Rep. 313; *Ritchie v. People*, 155 Ill. 98, 29 L. R. A. 79, 40 N. E. Rep. 454; *Low v. Rees Printing Co.*, 41 Neb. 127, 24 L. R. A. 702, 59 N. E. Rep. 382; *Frorrer v. People*, 141 Ill. 171, 16 L. R. A. 492, 31 N. E. Rep. 395; *State v. Loomis*, 115 Mo. 307, 21 L. R. A. 789, 22 S. W. Rep. 350; *Commonwealth v. Perry*, 155 Mass. 117, 14 L. R. A. 325, 28 N. E. Rep. 1126; *In re Jacobs*, 98 N. Y. 98, 106, 50 Am. St. Rep. 636; *Allgeyer v. Louisiana*, 165 U. S. 778; *Leep v. St. Louis, etc., R. R. Co.*, 58 Ark. 407, 25 S. W. Rep. 75.

¹⁶ *Braceville Coal Co. v. People*, 147 Ill. 66.

¹⁷ *Kuhn v. Common Council*, 70 Mich. 534.

¹⁸ *Per Judge Scholfield, Frorrer v. People*, 141 Ill. 171, 181.

¹⁹ *Godcharles v. Wigeman*, 118 Pa. St. 431; *State v. Goodwill*, 33 W. Va. 179.

²⁰ *Braceville Coal Co. v. People*, 147 Ill. 66; *Frorrer v. People*, 141 Ill. 171.

²¹ *Allgeyer v. Louisiana*, 165 U. S. 578; *Republic Iron, etc., Co. v. State*, 160 Ind. 379; *Leep v. St. Louis, etc., R. R. Co.*, 58 Ark. 407, 25 S. W. Rep. 75, 28 L. R. A.

sons." the right to contract, it has been said, is "the most essential to human happiness."²² The rights of life, liberty and property constitute a trinity of rights, and each as opposed to unlawful deprivation, is of equal constitutional importance with each of these rights, under the operation of a familiar principle, every auxiliary right or attribute necessary to make the principal right effectual and valuable in its most extensive sense, pass as incidents of the original grant. "The rights thus guaranteed are something more than the mere privileges of locomotion; the guarantee is the negation of arbitrary power in every form which results in a deprivation of a right." Each of these rights, life, liberty and property, carries with it as its natural and necessary coincident, all that effectuates and renders complete and full, unrestrained enjoyment of that right. With the right of property, therefore, is necessarily included the right of acquiring property by labor or contract, and also of terminating that contract at pleasure, being civilly liable for any unwarranted termination.²³ "Liberty," it has been said, "includes the right to make and enforce contracts because the right to make and enforce contracts is included in the right to acquire property."²⁴ The question is settled upon good authority that the right to buy, use and sell property and contract in respect thereto is protected by the constitution.²⁵ And when an owner is deprived of one of the attributes of property, like the right to make contracts, he is deprived of his property within the meaning of the constitution.²⁶ "The right to acquire, enjoy and dispose of property is declared in the constitutions of several states to be one of the

264; *Commonwealth v. Perry*, 155 Mass. 117; *State v. Goodwill*, 33 W. Va. 179. In *Cox v. Pittsburgh, etc., R. R. Co.*, 1 Ohio N. P. R. 213, it was said that back of the right to acquire property lies the right to contract, and if a person can be deprived of the right to contract, he is injured in his right to acquire property. The liberty of making contracts is essential to the acquisition, possession and protection of property. Hence, if a statute contravenes this liberty, it must fall as certainly as though it were subversive of the citizen's right to more tangible or corporate property.

²² *Leep v. St. Louis, etc., R. R. Co.*, *supra*.

²³ *State v. Julow*, 129 Mo. 162, 173.

²⁴ *Matthews v. People*, 202 Ill. 389. In the case of *Republic Iron, etc., Co. v. State*, 160 Ind. 370, the court said that the right to a sustenance, and to acquire property, and to make treaties in relation thereto, is liberty in the constitutional sense. *Kuhn v. Common Council*, 70 Mich. 354. See *United States v. Northern Securities Co.*, 120 Fed. Rep. 721, where it was held that the constitutional guaranty of liberty to the individual to enter into private contracts is limited to some extent by the commerce clause of the constitution of the United States, and congress may, in the exercise of the power conferred by such clause, prohibit private contracts which operate to directly and substantially restrain interstate commerce.

²⁵ *Ritchie v. People*, 155 Ill. 98, 104; *State v. Goodwill*, 33 W. Va. 179, 184.

²⁶ *In re Jacobs*, 98 N. Y. 98; *Ritchie v. People*, *supra*; *Matthews v. People*, 202 Ill. 389.

inalienable rights of man. But this declaration is not held to preclude the legislature of any state from passing laws respecting the acquisition, enjoyment and disposition of property. What contracts respecting its acquisition and disposition shall be valid and what void or voidable; when they shall be in writing and when they may be made orally; and by what instruments it may be conveyed or mortgaged are subjects of constant legislation. And as to the enjoyment of property, the rule is general that it must be accompanied with such limitations as will not impair the equal enjoyment by others of their property. *Si utere tuo ut alienum non laedas* is a maxim of universal application.²⁷

6. *The Right to Pursue a Trade or Calling Includes the Right to Contract.*—In the privilege of pursuing an ordinary trade or calling must be embraced the right to make all proper contracts in relation thereto. It may be conceded that this right to contract in relation to persons or property, or to do business within the jurisdiction of a state, may be regulated and sometimes prohibited when the contracts or business conflict with the policy of the state. "It is undoubtedly true," it was said by the United States Supreme Court, "that it is the right of every citizen of the United States to pursue any lawful trade or business, under such restrictions as are imposed upon all persons of the same age, sex and condition. But the possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order and morals of the community. Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's own will. It is only freedom from restraint under conditions essential to the equal enjoyment of the same right by others. It is then liberty regulated by law."²⁸ Yet the power does not and cannot extend to prohibiting a citizen from pursuing a lawful trade or calling and making all contracts which may be proper, necessary and essential to his carrying on such business successfully.²⁹ "The main proposition," it was

²⁷ *Crowley v. Christensen*, 137 U. S. 86, 90.

²⁸ *Crowley v. Christensen*, *supra*, 89. "I hold that the liberty of pursuit—the right to follow any of the ordinary callings of life—is one of the privileges of a citizen of the United States." *Per Justice Bradley in Butchers' Union Co. v. Crescent City Co.*, 111 U. S. 764.

²⁹ *Allgeyer v. Louisiana*, 165 U. S. 578, citing *Butchers' Union Co. v. Crescent City Co.*, 111 U. S. 746; *Powell v. Penn*, 127 U. S. 678. In this case, an act prohibiting a person or corporation from doing any act within the state of Louisiana, to effect for himself or another, insurance on property then in the state, in any non-resident insurance company not complying with the laws of the state, was held to be in violation of the federal constitution, when applied to a contract of insurance made in another state, with an insurance company of that state, where the premiums and losses are to be paid. The act complained of was the writing within the state of Louisiana a letter of notifica-

said in the case of *Powell v. Pennsylvania*,³⁰ "advanced by the defendant is that his enjoyment upon terms of equality with all others in similar circumstances of the privilege of pursuing an ordinary calling or trade, and of acquiring, holding, and selling property, is an essential part of his rights of liberty and property, as guaranteed by the Fourteenth Amendment. The court assents to this general proposition as embodying a sound principle of constitutional law." In a later case it was said by the same court, that "in the privilege of pursuing an ordinary calling or trade, and of acquiring, holding and selling property must be embraced the right to make all proper contracts in relation thereto."³¹

7. *Labor and Vocation are Property.*—Property is every thing which has an exchangeable value.³² That labor and vocation are property is now well settled in law.³³ "It [property] is exchangeable for food and raiment and comforts, and may be bought and sold, and contracts made in relation thereto, the same as concerning any other property."³⁴ The right to make labor available, it is held, is next in importance to the right to life and liberty.³⁵ And to deprive the laborer and the employer of the right to contract with each other is to violate private rights of the citizen which are secured by the constitution.³⁶ Labor is the primary foundation of all wealth. The property which each one has in his own labor is the common heritage, and, as an incident to the right to acquire other property, the liberty to enter into contracts by which labor may be employed in such way as the laborer shall deem most beneficial, and of others to employ such labor, is necessarily included in the constitutional guaranty of the right of property.³⁷ In the case of *State v. Goodwill*,³⁸ a West Virginia case,

it was said: "The property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of the poor man lies in the strength and dexterity of his own hands; and to hinder him from employing these in what manner he may think proper, without injury to his neighbor, is a plain violation of this most sacred property. It is equally an encroachment both upon the just liberty and rights of the workman and his employer, or those who might be disposed to employ him, for the legislature to interfere with the freedom of contract between them, as such interference hinders the one from working at what he thinks proper, and at the same time prevents the other from employing whom he chooses. A person living under the protection of this government has the right to adopt and follow any lawful industrial pursuit, not injurious to the community, which he may see fit. And, as incident to this, is the right to labor or employ labor, make contracts in respect thereto upon such terms as may be agreed upon by the parties, to enforce all lawful contracts, to sue, and give evidence, and to inherit, purchase, lease, sell, and convey property of every kind. The enjoyment or deprivation of these rights and privileges constitutes the essential distinction between freedom and slavery; between liberty and oppression. These principles have been fully recognized and announced in many decisions of the Supreme Court of the United States, and other courts."

8. *Same Subject—The Right to Labor and Employ Labor.*—"The right to labor," it has been said, "is of all others, after the right to live, the fundamental, inalienable right of man, wherever he may be permitted to be, of which he cannot be deprived, either under the guise of law or otherwise, except by usurpation and force. Man ate and died. When God drove him forth from the Garden of Eden to till the ground, from whence he was taken," and said to him, "in the sweat of thy face shalt thou eat bread, till thou return unto the ground," He invested him with an inalienable right to labor in order that he might again eat and live."³⁹ Every person living under the protection of the general government has the right to follow such occupation or industrial pursuit as to him seems fit, provided it is not injurious to the health, morals, safety or welfare of the public. Persons may labor or employ labor, and make contracts in respect thereto, upon such terms as may be agreed upon by them, independently of legislative control, so long as they confine their undertakings to lawful employments

³⁰ *Republic Iron, etc., Co. v. State*, 160 Ind. 370, 385.
³¹ *In re Tiburico Parrott*, 1 Fed. Rep. 481.

³² *Matthews v. People*, 202 Ill. 389.

³³ *Matthews v. People*, 147 Ill. 66.

³⁴ *Braceville Coal Co. v. People*, 147 Ill. 66.
³⁵ *Snyder, J.*, 38 W. Va. 179, 188, citing *Yick Wo v. Hopkins*, 118 U. S. 356, 6 Sup. Ct. Rep. 1063; *Slaughter House Cases*, 16 Wall. 36; *Butchers' Union Co. v. Crescent City Co.*, 111 U. S. 746, 4 Sup. Ct. Rep. 652, 6 Meyer Fed. Dec., sec. 1000; *In re Jacobs*, 98 N. Y.

³⁶ *People v. Marx*, 99 N. Y. 377, 2 N. E. Rep. 29; *Ex parte Westerfield*, 55 Cal. 550; *Radio v. State*, 86 Tenn. 272, 6 S. W. Rep. 401; *State v. Devine*, 98 N. Car. 778, 4 S. E. Rep. 477. A large part of the above oft-quoted quotation was originally pronounced by Adam Smith, in his "Wealth of Nations," Bk. 1, ch. 10.

³⁷ *In re Tiburico Parrott*, 1 Fed. Rep. 481, 506.

which are not of a *quasi*-public character.⁴⁰ Every man has a right, under the law, as between himself and others, to full freedom in disposing of his own labor or capital according to his own will, and anyone who invades that right without lawful cause commits a legal wrong.⁴¹ And, to quote from an English case, "a man's right to determine when or where or with whom he will work, is in law a right of precisely the same nature and entitled to just the same protection, as a man's right to trade or work."⁴² Every man has a right to employ his talents, industry and capital as he pleases, free from the dictation of others. The labor or skill of the workman, be it of high or low degree, the plant of the manufacturer, the equipment of the farmer, the investments of commerce, are all in equal sense property.⁴³ It was said in a recent case decided by the Supreme Court of Pennsylvania that "the right to the free use of his hands is the workman's property as much as the rich man's right to the undisturbed income from his factory, houses and lands, by his work he earns present subsistence for himself and family; his savings may result in accumulations which will make him as rich in houses and lands as his employer. The right of acquiring property is an inherent indefeasible right of the workman; to exercise it he must have the unrestricted privilege of working for such employer as he chooses at such wages as he chooses to accept. This is one of the rights guaranteed him by our 'Declaration of Rights,' it is a right of which the legislature cannot deprive him, one which the law of no trades union can take from him, and one which it is the bounden duty of the court to protect. The one most concerned in jealously maintaining this freedom is the workman himself."⁴⁴ Every man has the right to enter into

any contract for the sale of his labor that, in his opinion, will be most advantageous and remunerative to himself. This right, of course, is subject to the condition that he must not, in the exercise thereof, infringe upon the rights of others.⁴⁵ A law, therefore, which interferes with the right to make reasonable and proper contracts in the course of a legitimate business, or attempts to nullify or impair the obligation of contracts made by persons in respect to labor, violates fundamental principles of right which are recognized by the constitution.⁴⁶

9. *The Right to Buy and Sell.*—All persons, or at least the majority of them, know, or are in a position to know, much better than any public authority can, the price they should give for the various commodities of necessity or luxury which they need. The interests of the buyer on the one hand, and of the seller on the other, will be much more likely to adjust the proper price, than any intervening authority can possibly do. On the contrary, the latter would, in the long run, produce disturbance and confusion, and, it might be, in some instances, distress. Such, at least, has been the result of similar interference in the markets of Paris during the first French revolution. "I hold, therefore," said Judge Clarke, in a New York case, when speaking of state interference with matters of this kind, "that the exercise of such power by the government was never contemplated by the framers of our political constitutions, or by the people who ratified them; and that the powers of the legislature cannot be extended so far as to dictate to individuals what price they shall give, or what price they shall receive, for any thing they may want to buy or to sell. If it possessed this power, for instance, of dictating what price citizens should give for any article of dress, it could pre-

⁴⁰ *Ritchie v. People*, 155 Ill. 104.

⁴¹ *Doremus v. Hennessy*, 176 Ill. 608; *Auther v. Oakes*, 63 Fed. Rep. 310.

⁴² *Allen v. Flood*, A. C. 1 (1898).

⁴³ *State v. Stewart*, 59 Vt. 273.

⁴⁴ *Dean, J., in Erdman v. Mitchell*, 207 Pa. St. 79, 91, 56 Atl. Rep. 227. "The first article," it was further said in this case, "of the constitution says: 'That the general great and essential principles of liberty and free government may be recognized and unalterably established; we declare that all men are born equally free and independent and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty; of acquiring, possessing and protecting property and reputation and of pursuing their own happiness.' Then follows the conclusion of this section: 'Everything in this article is excepted out of the general powers of the government and shall forever remain inviolate.' This clause, unlike many others in the constitution, needs no affirmative legislation, civil or criminal, for its enforcement in the civil courts. Wherever a court of common pleas can be reached by the citizen, these great and essential principles of free government must be recognized and vindicated by that court, and the indefeasible right of liberty and the right to acquire property must be protected under the common-

law judicial power of the court. Nor does it need statutory authority to frame its decrees or statutory process to enforce them against the violators of constitutional rights. * * * If the legislature to-day abolished indictment for wilful and malicious trespass, or abolished the writ of estrepelement, tomorrow courts of equity would still be bound under the declaration of rights to protect the citizen in the peaceable possession and enjoyment of his land, even if to do so they were compelled to imprison the lawless trespasser who refused to obey their writs. So the same courts are still bound to protect the humblest mechanic or laborer in his right to acquire property."

⁴⁵ *Commonwealth v. Brown*, 6 Pa. Dist. Rep. 773. The right to labor and employ labor and make contracts in respect thereto upon such terms as may be agreed upon between the parties, is included in the constitutional guaranty that no person shall be deprived of life, liberty or property without due process of law. *State v. Goodwill*, 33 W. Va. 179, 6 L. R. A. 621; *Godcharles v. Wigeman*, 113 Pa. St. 431; *Braceville Coal Co. v. People*, 147 Ill. 66, 22 L. R. A. 340.

⁴⁶ *Commonwealth v. Perry*, 155 Mass. 117, 28 N. E. Rep. 1126, 14 L. R. A. 325, 31 Am. St. Rep. 533; *Leep v. St. Louis, etc., R. R. Co.*, 58 Ark. 407, 25 S. W. Rep. 75, 23 L. R. A. 264, 41 Am. St. Rep. 109.

scribe what kind of dress they should wear; and thus we may, during any legislative session, hear that we had returned to the days of sumptuary laws. * * * Can we believe that such things in any of the commonwealths of America are cognizable by law, or that the people delegated such power to their legislatures? No; the legislative power in America is not omnipotent in this sense; regulations relative to private manners and habits, and to prices and expenses, are not within the domain of civil law. The possession of such power belongs alone to absolute governments, or to parliaments, which possess omnipotence. A power so infinite is inconsistent with the character and design of constitutional republican government. All the political power which the people, in their sovereign capacity, can, consistently with that character and design, exercise, has been delegated to the legislature; but nothing more. It can no more prescribe to us what price we shall pay for a coat, or for a substitute in the army, than it can prescribe what kind of shoes we shall wear, or how many courses we shall have for dinner. No government professing such power could be called free, and yet in framing the present constitution, the people declared that they establish it, in gratitude 'to Almighty God for their freedom.'⁴⁷ Constitutional government, under whatever form it may exist, is not based on the idea that all the conduct and acts and interests of a citizen are the proper subjects of legislation. On the contrary, the tendency of such a system is to confine the action of government within as limited a sphere as is consistent with the maintenance of the peace, good order and progress of society. It recognizes the great truth, that the most important and sacred purposes and interests of society are not within the domain of civil law, but are regulated by the power of self-adjustment, which God has implanted in it, through the balancing and antagonism of the varied needs and aspirations of the individuals of whom it is composed. The moral and religious interests of society, for instance, are out of the sphere of law—out of the sphere of political government; they are wisely left to individual and social efforts, prompted by benevolence and conscience. Not

⁴⁷ Powers v. Shepard, 1 Abb. Prac. (N. S.) 129, 133, 45 Barb. 524, 526, 527. In this case a statute prescribing what sum an individual should pay for a substitute to represent him in the national army, was held unconstitutional and void. "Formerly," it was further said in this case, "in England penal laws were enacted by the omnipotent parliament, to restrain excess in apparel, chiefly in the reigns of Edward III., Edward IV., and Henry VIII., against piked shoes, short doublets, and long coats, all of which, Blackstone tells us, were repealed by statute 1 Jac. 1, ch. 25. But, he remarks, as to excess in diet, there still remains one ancient statute unrepealed (10 Edw. III., ch. 3), which ordains that no man shall be served at dinner or supper with more than two courses, except on some great holidays, there specified, in which he may be served with three."

only are such efforts infinitely more benignant, but they are much more effectual than they possibly could be made through the cumbrous machinery of state, or any other political government.⁴⁸

10. Depriving a Person of the Right to Contract Deprives Him of Property.—To deprive the owner of property of one of its essential attributes, like the right to make a reasonable contract, deprives him, it is held, of his property, within the meaning of the constitution.⁴⁹ It is settled upon good authority that the privilege of contracting is not only a liberty, but is a property right as well,⁵⁰ and is protected by that provision of the constitution which guarantees that no person shall be deprived of his liberty or property without due process of law. Consequently, if a person is denied the right to contract and acquire property in the manner which he has before enjoyed under the law, and which, it may be, other persons are still allowed to do, it is reasonably clear that he is deprived of property to the extent that he is denied the right to contract.⁵¹ The right to contract is justly regarded as a very important right, vitally affecting the interests of either party to the agreement. To the extent to which it is abridged, a property right is destroyed or taken away.⁵² The protection of property is one of the objects for which free governments are instituted among men. And, as we have seen in another connection,⁵³ the right to acquire, possess and protect property includes the right to make reasonable contracts. Therefore, when an owner is deprived of an attribute of property, like the right to make contracts, he is deprived of his property within the meaning of the constitution.⁵⁴ The right to contract is the only way by which a person can rightfully acquire property by his labor.⁵⁵ It is included in the fundamental rights of liberty and property, and cannot be taken away without due process of law.⁵⁶

⁴⁸ Powers v. Shepard, 45 Barb. 524, 1 Abb. Prac. (N. S.) 129. See Beebe v. State, 6 Ind. 501, 512; Arrowsmith v. Burlingim, 4 McLean, 497; *In re Jacobs*, 98 N. Y. 98; People v. Bubb, 117 N. Y. 1, 43, 67, 68, 69.

⁴⁹ People v. Otis, 90 N. Y. 48; Ritchie v. People, 155 Ill. 98. "The right to use, buy, and sell property, and contract in respect thereto, including contracts for labor, is protected by the constitution. If the legislature without any public necessity, has the power to prohibit or restrict the right of contract between private persons in respect to one lawful trade or business, then it may prevent the prosecution of all trades and regulate all contracts." State v. Goodwill, 33 W. Va. 179, 184; State v. Julow, 129 Mo. 163.

⁵⁰ Frorrr v. People, 141 Ill. 171; Ramsey v. People, 142 Ill. 386.

⁵¹ Braceville Coal Co. v. People, 147 Ill. 66; Millett v. People, 117 Ill. 295; State v. Goodwill, 33 W. Va. 179; *In re Jacobs*, 98 N. Y. 98.

⁵² Ramsey v. People, 142 Ill. 386.

⁵³ See No. 5.

⁵⁴ *In re Jacobs*, 98 N. Y. 98; Ritchie v. People, 155 Ill. 98.

⁵⁵ Leep v. St. Louis, etc., R. R. Co., 58 Ark. 407.

⁵⁶ Ritchie v. People, *supra*. "The constitutiona

11. *Contractual Rights of Corporations.*—What is true of natural persons is not always true of corporations. Natural persons do not derive their right to contract from the legislature. Corporations, however, do. They possess only those powers or properties which the charter of their creation confers on them, either expressly or as incidental to their existence; and these may be modified or diminished by amendment or extinguished by the repeal of their charters when the right to do so has been reserved by the state conferring the charter.⁵⁷ A corporation has no inherent or natural rights like a citizen. It has no rights except those which are expressly conferred upon it, or are necessarily inferable from powers actually granted, or such as may be indispensable to the exercise of such as are granted.⁵⁸ "A corporation," it was said by Justice McKenna, in the Supreme Federal Court, "is the creature of the law, and none of its powers are original. They are precisely what the incorporating act has made them, and can only be exerted in the manner which that act authorizes. In other words, the state prescribes the purposes of a corporation and the means of executing those purposes. Purposes and means are within the state's control. This is true as to domestic corporations. It has even a broader application to foreign corporations."⁵⁹ While corporations are included within the operation of the constitutional guarantees of the sanctity of the rights of property,⁶⁰ it has been held that this is not the case in regard to the constitutional guaranty of the liberty of contract. This guaranty is held to be reserved to natural persons and not to corporations.

guaranty that no person shall be deprived of his property without due process of law may be violated through the physical taking of property for public use. Its capability for enjoyment and adaptability to some use are essential characteristics and attributes without which property cannot be conceived, and hence any law which destroys it or its value, or takes away any of its essential attributes, deprives the owner of his property. The constitutional guaranty would be of little worth if the constitution could, without compensation, destroy property or its value, deprive the owner of its use, deny him the right to live in his own house, or to work at any lawful trade therein." *In re Jacobs*, 98 N. Y. 98.

⁵⁷ *Shaffer v. Mining Co.*, 55 Md. 74; *State v. Brown*, etc., Co., 18 R. I. 16, 25 Atl. Rep. 246; *Sinking Fund Cases*, 94 U. S. 700; *Miller v. State*, 15 Wall. 498; *Holyoke Co. v. Lyman*, 15 Wall. 519; *Tomlinson v. Jessup*, 15 Wall. 459; *Railroad Company v. Maine*, 96 U. S. 499; *Shields v. Ohio*, 93 U. S. 324; *Roxbury v. R. R. Co.*, 6 Cush. 424; *Fitchburg Company v. Grand Junction Co.*, 4 Allen, 198; *Commonwealth v. Easton Co.*, 108 Mass. 254; *Railroad Company v. Bonnell*, 24 N. Y. 345; *Waterworks v. Schottler*, 110 U. S. 347. See also *Detroit v. Road Co.*, 43 Mich. 140.

⁵⁸ *Waters-Pierce Co. v. Texas*, 177 U. S. 28; *Leep v. St. Louis*, etc., R. R. Co., 58 Ark. 407, 23 L. R. A. 264; *Shaffer v. Mining Co.*, 55 Md. 74.

⁵⁹ *Waters-Pierce, etc., Co. v. Texas*, *supra*, 43.

⁶⁰ *Wheeling Bridge, etc., Co. v. Gilmore*, 8 Ohio C. R. 658; *Citizens' Horse Ry. Co. v. City*, 47 Ill. App. 388.

While certain police regulations of the liberty of contract may be unconstitutional as applied to natural persons, they may be valid when they are enforced against corporations. Where the power to amend or revoke a charter is reserved to the state, there can be no force in the plea that a police regulation violates constitutional rights, unless some vested property right is infringed thereby.⁶¹

12. *Police Regulations — Comfort, Safety, Health, Morals, Welfare.*—Under the police power the legislature may prohibit all things which are hurtful to the comfort, safety, health, morals and welfare of the public, even though the prohibition invade the right of liberty or property of an individual.⁶² A law, however, to have that effect and be valid, must be an appropriate measure for the promotion of the comfort, welfare, health, safety or morals of the general public. It must be what it purports to be, a police regulation in truth and in fact. Courts are authorized to interfere and declare a statute unconstitutional, or not the "law of the land," if it conflicts with the constitutional rights of the citizen and does not relate to or is not an appropriate measure for the purposes enumerated.⁶³ When the legislature, therefore, undertakes to restrain or regulate the right of citizens to freely

⁶¹ *Leep v. St. Louis, etc., R. R. Co.*, *supra*, and cases cited. In this case, however, it was said: "It is obvious that the legislature cannot, under the power to amend, take from corporations the right to contract; for it is essential to their existence. It can regulate it when the interest of the public demand it, but not to such an extent as to render it ineffectual, or substantially impair the object of incorporation. The constitution of this state (Arkansas) in reserving the power to amend or repeal, expressly provides that it may be exercised whenever, in the opinion of the legislature, the charter 'may be injurious to the citizen of this state; in such manner, however, that no injustice shall be done to the corporation.' Whenever the charters of railroad companies become obstacles in the way of the legislature so regulating their roads as to make them subserve the public interest to the fullest extent practicable, their charters are, in that respect, injurious to the citizens of the state, and can be amended as to defects in such manner as will be just to the corporations. For they are organized for a public purpose, and their roads are declared by the constitution to be public highways, and they are made common carriers." See also *Chicago Life Insurance Co. v. Needles*, 113 U. S. 574; *Minnesota R. R. Co. v. Beckwith*, 129 U. S. 26; *R. R. Co. v. Wilson* (Texas), 19 S. W. Rep. 910.

⁶² *Powell v. Pennsylvania*, 127 U. S. 678; *Boston Beer Co. v. Massachusetts*, 97 U. S. 25; *Lawton v. Steel*, 152 U. S. 133; *Stone v. Mississippi*, 101 U. S. 814; *Hannibal, etc., R. R. Co. v. Husen*, 95 U. S. 465; *Patterson v. Kentucky*, 97 U. S. 501; *Barbour v. Connolly*, 113 U. S. 27; *State v. Kansas City, etc., R. R. Co.*, 32 Fed. Rep. 722; *New Orleans Water Works Co. v. St. Tammany, etc., Co.*, 14 Fed. Rep. 194; *In re Considine*, 83 Fed. Rep. 157; *Dent v. West Virginia*, 129 U. S. 122.

⁶³ *Ritchie v. People*, 155 Ill. 98, 40 N. E. Rep. 454, 29 L. R. A. 79, 46 A. M. St. Rep. 315; *Lawton v. Steel*, 152 U. S. 133; *In re Wilkshire*, 103 Fed. Rep. 620.

enter into contractual relations with each other, it must not only appear to the general assembly that the restraint of the right and liberty of contract is for the common public welfare, and the equal protection and benefit of the people, but to the courts as well, and it must be so clear that a court of justice, in the calm deliberation of its judgment, may be able to see that such restraint is for the common good.⁶⁴ While the constitutional liberty of contract is not conceded to be absolutely free from all legislative restraint, still one's liberty, as well as property, is infringed, if his liberty to make reasonable contracts is taken away or restricted by unreasonable regulations. No one will, perhaps, question the statement that an unrestrained right to contract might become a serious menace to the safety and welfare of the public; or might injuriously affect the rights of others. At no time in the life of the law has it been permissible for a person to contract for the commission of crime, or for the violation of law, or for the trespass upon the rights of others, or for the perpetration of fraud. With the broadening of the police power in the conservation and protection of the public's interests, regulations, from time to time, have been prescribed by the legislature, to some extent limiting or restricting the liberty of contract; and these regulations are now being rapidly multiplied. Courts are therefore called upon to pass upon the reasonableness or unreasonableness of such regulations and thus declare their constitutionality or unconstitutionality. With the wisdom, policy or necessity for such enactments courts have nothing whatever to do.⁶⁵ But what are the subjects of police power, and what are reasonable or unreasonable regulations, are judicial questions, and courts may declare enactments which, under the guise of police regulations, go beyond the great principle of securing the safety or welfare of the public, to be invalid.⁶⁶ Acts, which in and of themselves alone are harmless enough, may be condemned because of the facility they otherwise offer for a cover or disguise for the doing of that which is harmful.⁶⁷ The government, however, under the guise of regulation, cannot prohibit or destroy. It cannot deprive a citizen of his right to pursue a calling, occupation or business not necessarily injurious to the community, when he

⁶⁴ *Palmer v. Tingle*, 55 Ohio St. 423, 45 N. E. Rep. 313; *People v. Gillson*, 109 N. Y. 389, 4 Am. St. Rep. 465.

⁶⁵ *Booth v. People*, 186 Ill. 43, 49; *State v. Schlenkee*, 112 Iowa, 642, 646.

⁶⁶ *Ex parte Whitwell*, 98 Cal. 73; *In re Morgan*, 26 Colo. 415; *People v. Gillson*, 109 N. Y. 389; *New York Fire Department v. Gilmore*, 149 N. Y. 463; *Color v. Fisk*, 153 N. Y. 185; *Commonwealth v. Vrooman*, 164 Pa. St. 306; *State v. Speyer*, 67 Vt. 502; *State v. Goodwill*, 33 W. Va. 179; *Taylor v. Pine Bluff*, 34 Ark. 603; *Platte, etc., Canal, etc., Co. v. Dowell*, 17 Colo. 376; *Rubstrat v. People*, 185 Ill. 123; *People v. Warden*, 144 N. Y. 529; *McCullough v. Brown*, 41 S. Car. 220; *Booth v. People*, 186 Ill. 43.

⁶⁷ *Magrer v. People*, 97 Ill. 320, 331.

is willing to comply with reasonable regulations imposed upon him or the business. It can never encroach upon the liberty of the citizen or invade the rights of property which are protected by the constitution.⁶⁸

13. *Legislative Interference with Fundamental Rights—Privileges and Immunities of Citizens.*—Without doubt the legislature has the right to prescribe whatever reasonable regulations it deems necessary for the preservation of the public health, good order, morals and intelligence, not inconsistent with constitutional restrictions. It cannot, however, as before observed, interfere with the fundamental rights, liberties, privileges and immunities of the citizen, under the guise of police regulations. This question, of course, has its limits in both directions; and while courts should carefully abstain from invading the almost limitless field of legislation, where the will of the people is supposed to be freely expressed, it is, nevertheless, their duty to prevent the infringement of any undoubted individual right secured by the constitution. Laws which undertake to abolish rights, the exercise of which does not infringe the rights of others, or to limit their exercise beyond what is reasonably necessary to secure the public welfare, health and safety, cannot be regarded as a proper exercise of the police power of the state. This would be governmental usurpation, such as violates the principles of abstract justice as developed under our republican institutions. "The disposition of legislatures to interfere in the ordinary concerns of the individual, as evidenced by the laws enacted by parliaments and legislatures from the earliest times, and the futility of such interference to accomplish the purposes intended, have been the subject of remark by some of the ablest of English speaking observers. Buckle, in his *History of Civilization in England*, in speaking of the course of English legislation, says: 'Every great reform which has been effected has consisted, not in doing something new, but in undoing something old. The most valuable additions made to legislation have been enactments destructive of preceding legislation, and the best laws which have been passed have been those by which some former laws have been repealed.' And again: 'We find laws to regulate wages; laws to regulate prices; laws to regulate profits; laws to regulate the interest on money; custom house arrangements of the most vexatious kind, aided by a complicated scheme, which was well called the sliding scale—a scheme of such perverse ingenuity that the duties constantly varied on the same article, and no man could calculate beforehand what he would have to pay. A system was organized, and strictly enforced, of interference with markets, interference with manufactures, interference with machinery, interference even with shops. In other words, the industrious classes were robbed in order that industry might

⁶⁸ *State v. Seongal*, 3 S. Dak. 55, 68; *In re Jacobs*, 98 N. Y. 98.

thrive.⁶⁹ To uphold legislation of this character is to provide the most frequent opportunity for arraying class against class; and, in addition to the ordinary competition that exists throughout all industries, a new competition will be introduced, that of competition for the possession of the government, so that legislative aid may be given to the class in possession thereof in its contests with rival classes or interests in all sections and corners of the industrial world. * * * Contests of such a nature are productive only of harm. The only safety for all is to uphold, in their full vigor, the healthful restrictions of our constitution, which provide for the liberty of the citizen, and erect a safeguard against legislative encroachments thereon, whether exerted today in favor of what is termed the laboring interests, or tomorrow in favor of the capitalists. Both classes are under its protection, and neither can interfere with the liberty of the citizen, without a violation of the fundamental law. In my opinion the court should not strain after holding such species of legislation constitutional. It is so plain an effort to interfere with what seems to me the most sacred rights of property and the individual liberty of contract that no special intendment in its favor should be indulged in."⁷⁰

14. *Special Laws — Partial Legislation.*—Some statutes may be void though general in their scope, while others may be valid though establishing rules for single cases only. An enactment, therefore, may be the law of the land without being a general law. Public laws may be either general or local in their application, unless some express constitutional provision forbids. They may embrace many subjects or one, or they may extend to all persons or be confined to particular classes, as minors, married women, and the like. The legislature must determine whether particular rules shall extend to the people of all the state or to a part of the state or a class of citizens thereof. The needs or prevailing public sentiment of a section of the state may require or make acceptable police regulations which are not suited to other parts of the state. The legislature therefore may prescribe such different laws of police for different sections of the state as in its judgment the different needs and requirements of the section or sections under consideration make necessary. Discriminations like these are continually made, and their local or special character is not enough to render them invalid. It may be desirable for the legislature to prescribe special rules for certain occupations, and make distinctions in the rights, obligations and capacities of individuals. Common carriers and bankers, for example, may require special regulation for the public benefit. If the laws are not

⁶⁹ Buckle's History of Civilization in England, vol. 1, pp. 199, 200, etc.

⁷⁰ People v. Budd, 117 N. Y. 1, 68, 69. Opinion by Peckham, J., since elevated to the Supreme Court of the United States. See also People v. Gillson, 109 U. S. 389.

otherwise objectionable, all that can be required of them is that they be general in their application to the class or locality to which they apply. Statutes, however, which select particular individuals from a class or locality, and subject them to special rules, or impose upon them peculiar obligations or burdens from which others in the same class or locality are exempt, are unconstitutional and void.⁷¹ "It is undoubtedly true," said the court in an Illinois case, "that the people, in their representative capacity, may, by general laws, render that unlawful, in many cases, which had hitherto been lawful. But laws depriving particular persons or classes of persons of rights enjoyed by the community at large, to be valid, must be based upon some existing distinction or reason applicable to others not included within the provisions. And it is only when such distinctions exist that differentiate, in important particulars, persons or classes of persons from the body of the people, that laws having operation only upon such particular persons or classes of persons have been held to be valid enactments."⁷² The imposition of unreasonable and unnecessary burdens upon any one citizen or class of citizens, is held to transcend the authority intrusted to the legislature by the constitution. This has been held to be the case even though the same burden is imposed upon all other citizens or classes of citizens. General laws, agreeably to this view, may be as tyrannical as partial laws.⁷³ Every law, it is said, which destroys or affects individual rights, or restricts the privileges of certain classes of persons, where there is no public necessity for such discrimination, is void. "The rights of every individual," said the Supreme Court of West Virginia, "must stand or fall by the same rule of law that governs every other member of the body politic under similar circumstances; and every partial or private law which directly proposes to destroy or affect individual rights, or does the same thing by restricting the privileges of certain classes of citizens and not of others, when there is no public necessity for such discrimination, is unconstitutional and void. Were it otherwise, odious individuals or corporate bodies would be governed by one law, and the mass of the community, and those who make the laws, by another; whereas, a like general law, affecting the whole community equally could not

⁷¹ See Lin Sing v. Washburn, 20 Cal. 534.

⁷² Braceville Coal Co. v. People, 147 Ill. 72. See Cooley's Const. Lim. (7th Ed.), 554-557.

⁷³ Ritchie v. People, 155 Ill. 98, 40 N. E. Rep. 454, 29 L. R. A. 79, 46 Am. St. Rep. 315. It was said in this case that "the right to contract would be valueless if it could not be exercised with reference to the particular subject-matter in hand. If its exercise is forbidden between two persons competent to contract and concerning a lawful subject of contract, it is none the less abridged because other persons may be permitted to contract, or because the same persons may be at liberty to contract about some other matter."

have been enacted.⁷⁴ A law, however, according to the prevailing view of courts, is not necessarily special which includes within its operation all persons of a class, to which its provisions can alone be applied. If that were the true construction of the constitutional provision against the enactment of special laws, most of the police regulations of trades and professions, as well as property, would be unconstitutional as class legislation.⁷⁵ In many instances police regulations of trades and professions are held to be unconstitutional not only because they are special laws, affecting only one class of citizens, and not applicable to all persons in general, but likewise because they constitute an unlawful interference with the citizen's liberty of contract. In cases where they are unconstitutional, it is probable that they are so for the principal reason that they, as general laws, are an unconstitutional interference with the liberty of contract of the individuals affected by their provisions.⁷⁶

15. *Paternalism in Government — Sumptuary Laws.*—Laws which place arbitrary restrictions upon the right of the citizen to contract are the outgrowth of a sentiment favorable to paternalism in matters of legislation.⁷⁷ The effect of such laws, it is held, is to substitute the judgment of the legislature for the judgment of individuals in matters about which they are competent to agree with each other. In arbitrarily interfering with the liberty of contract between persons able to bind each other by valid agreements, the legislature assumes to dictate to what extent they shall exercise their faculties and capacities in acquiring and possessing property, thus infringing the right of private judgment in respect thereto.⁷⁸

⁷⁴ Snyder, J., in *State v. Goodwill*, 33 W. Va. 170, 182, citing *Wally v. Kennedy*, 2 Yerg. 554. See *Johnson v. Mining Co.* (Cal.), 58 Pac. Rep. 304.

⁷⁵ See *Orient Insurance Co. v. Daggs*, 172 U. S. 557, affirming 136 Mo. 382. See *Millett v. People*, 117 Ill. 394; *State v. Haun*, 61 Kan. 146, 18 Am. Law Reg. (N. S.) 676, 864, an article by Judge Cooley; 32 Am. Law Reg. & Rev. 1109, where the subject is discussed.

⁷⁶ See *Vogel v. Pekoc*, 157 Ill. 339, 30 L. R. A. 491.

⁷⁷ *Lowe v. Rees Printing Co.*, 41 Neb. 127. In this case it was said: "The outgrowth of this sentiment has been legislation for the regulation of the media of payment; the manner in which products shall be measured or weighed when compensation depends upon measure or weight, the hours of labor, and other kindred subjects."

⁷⁸ *Ritchie v. People*, 155 Ill. 98, 40 N. E. Rep. 454, 29 L. R. A. 79, 46 Am. St. Rep. 315. See *State v. Loomis*, 115 Mo. 307, 22 S. W. Rep. 350, 21 L. R. A. 789; *In re Jacobs*, 98 N. Y. 98, 114. In *State v. Goodwill*, 33 W. Va. 179, 186, the court, in speaking of a law prohibiting the issuing of script, etc., in payment of wages, etc., said: "In view of what the courts have uniformly held in respect to this class of legislation, it is needless to prolong this discussion. It is a species of sumptuary legislation which has been universally condemned, as an attempt to degrade the intelligence, virtue, and manhood of the American laborer, and foist upon the people a paternal government of the most objectionable character, because it assumes that the employer is a knave,

The doctrine of paternalism has been justified by some writers and judges upon the asserted fact that labor is constantly engaged in an unequal contest with capital, and that the former must be reinforced by the legislative power of the state to prevent its overthrow in the conflict. But liberty is the cornerstone of our government, and laws which infringe the free exercise of the right of persons to freely enter into business relations with each other in ways which they may consider most advantageous to themselves, are encroachments upon their constitutional rights and obstructions to their pursuit of happiness.⁷⁹ "They are plain invasions," says Judge Cooley, "of individual liberty, and therefore are forbidden. Every person must be allowed to judge of his own table, and to dress as he pleases, subject to such police regulations as may be established for the preservation of public order and public morals. Women, for example, may be forbidden to go about in the ordinary garb of men, as a necessary regulation against immorality and indecency. So every person must be allowed to deal with his property as he pleases, subject to reasonable regulations for the protection of others. He cannot, for example, be compelled against his will to improve his real estate."⁸⁰ Justice Brewer, when speaking of this class of legislation, said in the Supreme Court of the United States: "The paternal theory of government is to me odious. The utmost possible liberty to the individual, and the fullest possible protection to him and his property, is both the limitation and duty of government. If it may regulate the price of one service, which is not a public service, or the compensation for the use of one kind of property which is not devoted to a public use, why may it not with equal reason regulate the price of all service, and the compensation to be paid for the use of all property? And if so, 'Looking Backward' is nearer than a dream."⁸¹

16. *The Privilege of Contracting is not Absolute.*—Notwithstanding the general liberty of contract possessed by the citizen under the constitution, it is conceded by all persons that the right is not absolute, and may be subjected to the restraints demanded by the safety and welfare of the public.⁸² There are many kinds of contracts which, while not in themselves immoral or *mala in se*, may yet be prohibited by the legislatures of states, and in certain cases by congress.⁸³ The

and the laborer an imbecile." See also *Republic Iron, etc., Co. v. State*, 160 Ind. 379; *Freror v. People*, 141 Ill. 171, 180, 31 N. E. Rep. 397, 16 L. R. A. 495.

⁷⁹ *State v. Haun*, 61 Kan. 146.

⁸⁰ Cooley's *Prin. Const. Law*, 263.

⁸¹ *Budd v. New York*, 143 U. S. 517, 551.

⁸² *St. Louis, Iron Mountain, etc., Railroad Co. v. Paul*, 173 U. S. 404.

⁸³ *United States v. Joint Traffic Association*, 171 U. S. 505; *State v. Loomis*, 115 Mo. 307; *In re Jacobs*, 98 N. Y. 98; *People v. Gillson*, 109 N. Y. 389; *Godcharles v. Wigeman*, 113 Pa. St. 431; *Commonwealth v. Perry*, 155 Mass. 117; *Ex parte Sing Lee*, 96 Cal.

conflicting interests of individuals makes this necessary. Rights in conflict with each other cannot be unlimited. Duties to persons and society are imposed on every individual. Every man, when he enters into society, undertakes to perform these duties. He necessarily surrenders some rights or privileges on account of his relations to others. His right to contract becomes subject to these duties, among which is the duty to so conduct himself and use his property as to not unnecessarily injure another. He submits himself to such restraints and burdens as may conduce to the general comfort, health and prosperity of the state. To conserve and enforce these rights and duties the government can impose such restrictions upon his actions as may be appropriate for that purpose. "This power inheres in every sovereignty and is essential to the maintenance of public order, and the preservation of mutual rights from the disturbing conflicts which would arise in the absence of any controlling, regulating authority."⁸⁴ It is within the undoubted power of government to restrain some individuals from all contracts as well as all individuals from some contracts. Thus it may deny to all persons the right to contract for the purchase and sale of lottery tickets.⁸⁵ It may deny to the common carrier the power to make any contract releasing himself from liability for his negligence. Indeed, it may restrain all engaged in any employment from any contract in the course of that employment which is against public policy. The possession of this power by governments in no manner conflicts with the proposition that generally speaking, every citizen has a right freely to contract for the price of his labor, services, or property.⁸⁶

17. *Limitation of the Right to Contract Must Rest Upon Some Substantial Basis.*—As has been stated before, the right to contract may be subject to limitations growing out of the duties which the individual owes to society, to the public, or to the government. These limitations are sometimes imposed by the obligation to so use one's own as not to injure another.⁸⁷ They may be imposed to meet the demands of public policy or on account of the necessity of protecting the public against fraud or injury. They may also be necessary because of the want of capacity of the contracting parties. But the power of the legislature to limit the right to contract must, in every case, rest upon some reasonable basis. It cannot be arbitrarily exercised.⁸⁸ It has been

⁸⁴ State v. Goodwill, 33 W. Va. 179; State v. Firecreek Coal, etc., Co., 33 W. Va. 188; Leep v. St. Louis, etc., Railroad Co., 58 Ark. 407; Millett v. People, 117 Ill. 294; Forrer v. People, 141 Ill. 171; *In re Kubach*, 28 Cal. 274; Coal Company v. People, 147 Ill. 66; Republic Iron, etc., Co. v. State, 160 Ind. 379.

⁸⁵ See Leep v. St. Louis, etc., Railroad Co., 58 Ark. 407, 25 S. W. Rep. 75.

⁸⁶ Frisbie v. United States, 157 U. S. 160.

⁸⁷ Frisbie v. United States, 157 U. S. 160.

⁸⁸ Ritchie v. People, 154 Ill. 98.

⁸⁹ Ritchie v. People, *supra*.

held that such power must be based in every case on some condition, and not on the absolute right to control.⁸⁹ If the right to contract could be limited by arbitrary legislation which is based on no reason upon which it may be defended, the right would cease to exist and become a license revocable at the will of the legislature. Such power cannot exist, for, if it could, it would be subservient of the right to enjoy and defend liberty, acquire and possess property, and to pursue happiness, declared to be inalienable by the constitution.⁹⁰ "When the subject of the contract," it has been said, "is purely and exclusively private, unaffected by any public interest or duty to person, to society, or government, and the parties are capable of contracting, there is no condition existing upon which the legislature can interfere for the purpose of prohibiting the contract, or controlling the terms thereof."⁹¹ The right to buy, use, and sell property, and contract in respect thereto, is protected by the constitution. There must be some public necessity to justify the legislature in restricting or prohibiting the right of contract between private persons in respect to lawful trades or businesses.⁹² The general rule is, that parties, able and willing to contract, may freely make such contracts concerning their property or labor not contrary to good morals or public policy, as they may deem for their best interests. The instances where the legislature may interfere to abridge or deny this right are exceptional, and such interference must have some reason for its justification other than the mere judgment of the legislature that the contract is not for the best interests of one or the other of the parties to it.⁹³ Judge Cooley has said on the general subject that "the doubt might also arise whether a regulation made for any one class of citizens, entirely arbitrary in its character, and restricting their rights, privileges or legal capacities in a manner before unknown to the law, could be sustained notwithstanding its generality. Distinctions in these respects must rest upon some reason upon which they can be defended,—like the want of capacity in infants and insane persons; and if the legislature should undertake to provide that persons following some specified lawful trade or employment should not have capacity to make contracts,

⁸⁹ State v. Loomis, 115 Mo. 307; Ritchie v. People, *supra*.

⁹⁰ State v. Norton, 5 Ohio N. P. R. 183; Leep v. St. Louis, etc., Railroad Co., 58 Ark. 407, 25 S. W. Rep. 75, 23 L. R. A. 264; Andrew v. Beame, 15 R. I. 461, 8 Atl. Rep. 540. See Hancock v. Yaden, 121 Ind. 366; State v. Peel Split Coal Co., 36 W. Va. 802, 15 S. E. Rep. 1000. The latter cases seem to take a contrary view, but they are against the weight of authority. They do not hold, however, that the legislature has absolute right or power to limit the right to contract.

⁹¹ Leep v. St. Louis, etc., Railroad Co., 58 Ark. 407, 421.

⁹² State v. Goodwill, 33 W. Va. 179.

⁹³ Commonwealth v. Brown, 8 Pa. Sup. Ct. Rep. 339.

or to receive conveyances, or to build such houses as others were allowed to erect, or in any other way to make such use of their property as was permissible to others, it can scarcely be doubted that the acts would transcend the due bounds of legislative power, even though no express constitutional provision could be pointed out with which it would come in conflict. To forbid to an individual or a class the right to the acquisition or enjoyment of property in such manner as should be permitted to the community at large, would be to deprive them of liberty in particulars of primary importance to their pursuit of happiness; and those who would claim a right to do so ought to be able to show a specific authority therefor, instead of calling upon others to show how and where the authority is negatived.⁹⁴ "We do not believe," it has been said, "that, in good conscience, the right to make any lawful contract can be limited or controlled by legislation determined by no rule or principle, that is, purely arbitrary legislation, and therefore absolutely defenseless; because if it could, the right of freedom of contract would cease to live, and would become a mere plaything, and a license revocable at the will, whim or caprice of the law making power; and thereupon, the government would become a despotism, both in theory and in fact. * * * Now, it is apparent, that when the subject of a contract is purely of a private nature, and not affected by any public interest or duty to society, to person or government, and the parties are capable of contracting, there is no condition existing, upon which the city council can interfere for the purpose of either forbidding the making of a contract, or controlling its terms and conditions."⁹⁵ The constitutional guaranty of liberty to the individual to enter into private contracts is, however, limited to some extent by the commerce clause of the constitution of the United States, and congress may, in the exercise of the power conferred by such clause, prohibit private contracts which operate to directly and substantially restrain interstate commerce.⁹⁶

⁹⁴ Cooley's Const. Lim. 560, 561 (7th Ed.). See also to same effect *In re Morgan*, 26 Colo. 415; *Low v. Rees Printing Co.*, 41 Neb. 137; *Ten Hour Law*, 24 R. I. 603, 610.

⁹⁵ *State v. Norton*, 5 Ohio N. P. R. 183, 186, 187. In this case the constitutionality of a law fixing the hours of labor and the amount of wages to be paid to laborers, was under consideration. See *Holden v. Hardy*, 169 U. S. 393, 18 Sup. Ct Rep. 388, 42 Law Ed. 780, where it was said: "The fact that both parties to a contract are of full age and competent to enter into the same does not necessarily deprive the state of the power to interfere where the parties do not stand upon an equality, or where the public health demands that one party to the contract shall be protected against himself. The state still retains an interest in his welfare, however reckless he may be. The whole is no greater than the sum of all the parts, and when the individual health, safety, and welfare are sacrificed or neglected, the state must suffer." See also *State v. Cantwell*, 78 S. W. Rep. 576.

⁹⁶ *Form of Contracts—Statute of Frauds*.—The legislature may declare the mode or form in which the contracts of parties shall be expressed or evidenced in order that they may be enforceable.⁹⁷ The statutes of fraud are sometimes referred to for the purpose of showing the power of the legislature to control the right to contract. The object of these statutes is to prevent fraud and perjuries. For this purpose some of them provide that certain contracts shall be in writing, in order to prevent controversies, litigation, and false swearing as to the terms of the contract. Others declare that certain deeds, conveyances and transactions shall be void because they defraud or tend to defraud innocent persons. They are based on the maxim: "*Sic utere tuo ut alienum non laedas.*" None of them limit the right to contract, but regulate the exercise of it.⁹⁸ They clearly come within the power of the legislature to protect the rights of persons, prevent wrongs, and enforce honesty and fair dealing in the transactions of individuals.⁹⁹

⁹⁹ *Business or Property Affected with a Public Use*.—The legislature can control to some extent the right to contract in reference to property clothed with a public interest, when used in a manner to make it of public consequence, and affect the community at large.¹⁰⁰ By devoting his property to a use in which the public has an interest, the owner, in effect, grants to the public an interest in that use, and submits himself to the control of the legislature for the common good, to the extent of the interest he has thus created. Persons and corporations engaged in certain occupations may be in the exercise of public franchises or special privileges not enjoyed by others, in which case the business implies a trust or public duty. The government, therefore, has a right to see that the trust is not abused and that the duty imposed by it is properly performed. Upon this principle the legislature can regulate the charges to be made for the storage of grain in public warehouses, and for the carriage of freight and passengers by common carriers.¹⁰¹ From the same source comes the power to regulate telephone, telegraph, and other companies,¹⁰² warehousemen, wharfingers, innkeepers, mills, bakers, hackmen and ferries,¹⁰³ and in so doing to fix a maximum of charge to be

⁹⁷ *United States v. Northern Securities Co.*, 120 Fed. Rep. 721.

⁹⁸ *Commonwealth v. Brown*, 8 Pa. Sup. Ct. Rep. 339.

⁹⁹ *Mansfield Digest*, Secs. 3371-3384.

¹⁰⁰ See *Browne on Statute of Frauds*, Secs. 114-138 (5th Ed.).

¹⁰¹ *Commonwealth v. Brown*, 8 Pa. Sup. Ct. Rep. 339; *Munn v. People*, 94 U. S. 113; *State v. Goodwill*, 33 W. Va. 179.

¹⁰² See note 104.

¹⁰³ See sections on Telephones, Telegraph Companies, Water and Gas Companies.

¹⁰⁴ See sections on Warehousemen, Wharfingers, Innkeepers, Mills, Bakers, Hackmen and Ferries.

made for services rendered, accommodations furnished and articles sold.¹⁰⁴

20. *Usury.*—Other instances of statutory regulation of the right to contract may be found in the statutes of many states prohibiting the taking of usury. They rest upon a traditional policy antedating the constitution. "They proceed," says Justice Schofield, in an Illinois case, "upon the theory that the lender and borrower of money do not occupy toward each other the same relations of equality that parties do in contracting with each other in regard to the loan or sale of other kinds of property, and that the borrower's necessities deprive him of freedom in contracting and place him at the mercy of the lender."¹⁰⁵ Lord Chief Justice Best, in 1825, in delivering an unanimous opinion of twelve judges, said: "The supposed policy of the usury laws in modern times is to protect necessity against avarice, to fix such a rate of interest as will enable industry to employ with advantage borrowed capital, and thereby to promote labor and increase national wealth, and to enable the state to borrow on better terms than could be made if speculation could meet the ministers in the money market on equal terms."¹⁰⁶

O. H. MYRICK.

Los Angeles, Cal.

¹⁰⁴ See generally *Munn v. Illinois*, 94 U. S. 113; *Budd v. New York*, 143 U. S. 517; *Dow v. Beidleman*, 125 U. S. 680, 49 Ark. 325; *Mayor, etc., Mobile v. Yule*, 3 Ala. 140; *Waterworks v. Schottler*, 111 U. S. 347; *State v. Goodwill*, 33 W. Va. 179.

¹⁰⁵ *Frorer v. People*, 141 Ill. 171.

¹⁰⁶ *House of Lords*, 3 Bing. 193. See section on *Usury*. Also see generally on the subject of *Usury*, *Tuler on Usury*, 61; *Dunlap v. Gould*, 16 Johns. 377.

GAME—PROHIBITION OF SALE—CONSTITUTIONALITY.

STATE v. SHATTUCK.

Supreme Court of Minnesota, October 20, 1905.

Section 45, ch. 336, p. 606, Laws 1903, which provides that "no person shall * * * sell to any one * * * at any time any * * * ruffed grouse," construed, and held, that the statute applies to all ruffed grouse, whether captured within or without this state, and, further, that, so construed, it is not in conflict with the constitution of the United States.

START, C. J.: The defendants on April 4, 1905, were convicted in the municipal court of the city of Minneapolis of the alleged offense of selling on December 4, 1904, a certain game bird, known as "ruffed grouse." They appealed from the judgment, and here urge two reasons why it should be reversed. The material provisions of the statute upon which the conviction is based are as follows: "No person shall * * * sell to any one, have in possession with intent to sell or have in possession or under control, at any

time any * * * ruffed grouse, * * * except that any ruffed grouse * * * or pheasant may be killed and had in possession between the 15th day of October and the 15th day of December following, * * * and when any of the birds mentioned in this section have been lawfully caught, taken, killed or had in possession during the time herein allowed they may be had in possession for the five days after the time herein allowed." Laws 1903, p. 606, ch. 336, § 45. It appears from the record that on December 5, 1904, Mr. Samuel F. Fullerton, with some other gentlemen, went to the Nicollet Hotel Cafe in Minneapolis, of which the defendants were the proprietors, and upon their request they were served by the servants of the defendants with a ruffed grouse. This particular bird was killed in the state of Wisconsin, brought into the state of Minnesota, thereafter came to the possession of the defendants, and was kept in the storeroom of their cafe until sold as stated.

1. The first reason urged why the judgment should be reversed is that the statute in question does not apply to wild game brought into this state from another state. The manifest purpose of the statute is to protect the game of this state, and not that of any other state; but the legislature, in the exercise of its police powers, might well conclude that a reasonable and effective method of protecting the ruffed grouse of this state would be to prohibit within the state the sale of such game, without reference to the state wherein it was captured. Or, in other words, the intention of this statute was to absolutely prohibit trafficking in such game within the state, leaving those who desire it for their pleasure or personal use free to go and capture it, at such times and subject to such reasonable limitations as the legislature might prescribe. It is not to be doubted that, if commercialism be eliminated by prohibiting the sale of game within the state, all motive would be removed for hunters for revenue only to engage in the business of killing game in such quantities as to extinguish the species in the course of a few years. Such a prohibition, therefore, is a potent protection to the game of our state. If, however, such protection be limited to game captured in this state, its purpose would be in a large measure defeated; for, when commingled, game of the same kind captured in this and other states cannot be readily, if at all, distinguished. Hence, to make the closing of the market for game an efficient method of protecting game of our own state, the prohibition must extend to all game; for, if the market be closed to the game of this state and left open to the game of other states, it would not be difficult to defeat the purpose of the statute by evasion, fraud, and lying. This statute, then, unless the language in which it is expressed forbids, must be construed so as to give effect to the purpose for which it was enacted and not so as to defeat it. The language is this: "No persons shall

sell to any one at any time any ruffed grouse." This clear and precise prohibition extends to all ruffed grouse, and we cannot construe the statute so as to exclude from its operation game killed in other states and brought into this state and here sold, without disregarding, not only the manifest purpose of the statute, but also its unequivocal language. The statute means just what it says.

Counsel for the defendants cite and rely upon the following cases: *People v. O'Neil*, 71 Mich. 325, 39 N. W. Rep. 1; *Commonwealth v. Wilkinson*, 139 Pa. 298, 21 Atl. Rep. 14; *Commonwealth v. Hall*, 128 Mass. 410, 35 Am. St. Rep. 387. The statute of Michigan construed in the first case cited prohibited the sale of "any of the kinds or species of birds protected by this act." It was the game of the state of Michigan which was protected by the act; hence it was necessarily held that the prohibition extended only to such game. The Pennsylvania statute provided that no person shall "kill or expose for sale or have in his or her possession after the same has been killed any quail," etc., and it was held in the second case cited that the prohibition against killing game was necessarily limited to game of the state, because the statute could not, and was not intended to have, any extraterritorial effect, and, further, that the clause, "after the same has been killed," referred to the same game that it was lawful to kill; that is, the game of the state. The statute of Massachusetts provided that "whoever in this commonwealth takes or kills any * * * ruffed grouse, * * * or sells, buys, has in possession or offers for sale any of said birds, shall upon conviction be punished by a fine of twenty dollars for each and every such bird." It was, in the last case cited, held that the statute had reference only to birds killed in "this commonwealth;" that is, in Massachusetts. It is clear that by reason of the difference in the statutes construed none of the cases cited is here in point. We hold that the statute prohibits the sale of ruffed grouse within this state, whether it was killed in this state or killed and brought from another state.

The statute as thus construed does not violate any of the provisions of our state constitution, as the defendants claim. Their contention is that the statute, if so construed, violates section 7, art. 1, of our constitution, in that it deprives them of their property without due process of law. The argument in support of this claim, briefly stated, is that the game in question was lawfully captured in the state of Wisconsin, and thereby became the absolute property of its captor and of those to whom he might sell it; hence it was their private property, lawfully obtained and held by a title which was independent of this state, at the time they sold it. Therefore any law which forbids such a sale of their private property within this state deprives them of their property without due process of law. The argument seems plausible, but it is unsound in prin-

ciple; for when private property is brought from one state into another state, and becomes a part of the mass of property thereof, the police power of that state attaches to it, precisely as it does to like property originally therein. The title to all wild game is in the state, in trust for the citizens thereof, and is not subject to private ownership, except upon such conditions and limitations as the state may impose, in the exercise of its police powers, for the protection of such game. While such power cannot be extended to game in another state, yet if it is voluntarily brought into this state, and it is reasonably necessary to then subject it to the same police regulations as apply to game captured within this state, in order to prevent the extinction of game in this state, the legislature has the undoubtedly right to do so. Subjecting such game to the same limitations and restrictions as are applied to like game captured within the state does not deprive the owner thereof of his property without due process of law; for he voluntarily brings his property into this state, with knowledge of such restrictions, which are necessary for the protection of the property of the state. The effect of many valid police regulations is to restrict and impair rights of property, but in such cases private interests must yield to public interests. The conclusion we have reached is supported by the great weight of judicial authority. *State v. Rodman*, 58 Minn. 393, 59 N. W. Rep. 1098; *State v. Northern Pacific Ex. Co.*, 58 Minn. 403, 59 N. W. Rep. 1100; *State v. Chapel*, 63 Minn. 535, 65 N. W. Rep. 940; *State v. Poole* (Minn.), 100 N. W. Rep. 647; *Geer v. Connecticut*, 161 U. S. 519, 16 Sup. Ct. Rep. 600, 40 L. Ed. 793; *Magner v. People*, 97 Ill. 320; *Ex parte Maier*, 103 Cal. 476, 37 Pac. Rep. 402, 42 Am. St. Rep. 129; *People v. Bootman*, 180 N. Y. 1, 72 N. E. Rep. 505.

2. This brings us to the second reason urged by the defendants for a reversal of the judgment, which is that the statute in question violates section 1, art. 14, of the amendments to the constitution of the United States, in that it deprives the owner of his property without due process of law; also section 8, art. 1, thereof, in that it is an interference with interstate commerce. The fourteenth amendment does not impair the police powers of the state. *Barbier v. Connolly*, 113 U. S. 31, 5 Sup. Ct. Rep. 357, 28 L. Ed. 923; *Wisconsin Ry. Co. v. Jacobson*, 179 U. S. 287, 21 Sup. Ct. Rep. 115, 45 L. Ed. 194. It follows, then, that if, as we hold, the statute under consideration does not deprive the owner of the game, the sale of which is prohibited, of his property without due process of law, the statute is not in conflict with the fourteenth amendment. It is equally clear that the statute, as we have construed it, is not an interference with interstate commerce; for the game in question was at the time of the sale a part of the mass of property of this state and subject to the police powers of the state. If there was ever any doubt about this proposition, it is set at rest by the act of congress (Act May 25,

1900, ch. 553, 31 Stat. 187 [U. S. Comp. St. 1901, p. 290]), known as the "Lacey Act," which provides that "the dead bodies or parts thereof of wild game animals or game or song birds when transported into any state shall be subject to the laws of the state, enacted in the exercise of its police powers, to the same extent as if such game had been produced in such state, and shall not be exempt therefrom by reason of importation in original packages." This eliminates all questions of interstate commerce. *People v. Bootman*, 180 N. Y. 1, 72 N. E. Rep. 505.

Our conclusion is that the statute in question prohibits the selling of any ruffed grouse, whether it is captured within or without this state, and that, so construed, it is not in conflict with either the state or federal constitution.

Judgment affirmed.

NOTE.—Recent Decisions on the Constitutionality of Game Laws.—Game laws, or laws restricting the killing of wild animals, are increasing with the animal decrease in the population of our wild animal kingdom. Some of these restrictions, however, are so stringent that the question of whether such laws infringe the provisions of state or federal constitutions is becoming a serious one.

One of the phases of these questions has been discussed with absolute exhaustiveness and peculiar clearness of reasoning by Mr. Eugene F. Law, of Port Huron, Michigan, in 60 Cent. L. J. 324, where he limits his discussion to the following question: "The Power of a State to Forbid the Traffic in or the Possession of Wild Game and Fish when Brought in from Another State or County as Affecting Interstate Commerce." This article will prove of great value to anyone interested in the subject of the constitutionality of game laws where such laws interfere with interstate commerce.

We shall here take occasion, however, to refer some of the very recent cases. Thus, take the game law of Illinois, *Hurd's Rev. St. 1903*, ch. 61, § 25, which provides that no person shall at any time hunt, pursue, or kill with gun any protected game during any part of the year without first having procured a license so to do, and then only during the respective periods of the year when it shall be lawful; that an applicant for a license, if a non-resident shall pay to the county clerk \$15.00, and, if a resident, \$1.00, as a license fee. Other sections limit the hunting season, manner of killing, and amount of game to be killed or taken. Section 32 contains the proviso that nothing contained in this act shall apply to persons hunting on the land of another person by invitation of such land owner. When this act came before the Supreme Court of Illinois, that court held that section 32 is invalid, in so far as it authorizes a person to do, at the invitation of a land owner, what the landowner could not do himself. *Cummings v. People*, 211 Ill. 392, 71 N. E. Rep. 1031.

The Colorado Appellate Court has just held that a statute making the possession of game unlawful, unless permission therefor is shown, is valid, where the legislature of the state has vested the ownership of game in the state as proprietor.

In New York it has been held that the game law of that state prohibiting any one from having certain classes of birds in his possession, in so far as it pro-

vides penalties for the possession of snow buntings which one had when the act went into effect, where such possession was lawful previous to that time, is unconstitutional, as a confiscation of private property without compensation. *People v. Cohen*, 86 N. Y. Supp. 475.

BOOK REVIEW.

FEDERAL STATUTES, ANNOTATED, VOL. 7.

One scarcely conceives the extent to which the United States government has by legislation, entered into and interfered with the business and private interests of the citizens of the various states, until he picks up a volume of that new and well edited work entitled "Federal Statutes, Annotated," the seventh volume of which is just out and is now on our desk for review. This volume is the last of the series treating of statute law as the subject matter, arranged in alphabetical subdivisions included within the subjects of "Searches and Seizures" and "Yachts." Between these titles are discussed among others the following subjects of federal legislation: Seduction, Seeds, Shipping and Navigation, Smithsonian Institute, Smuggling, Stamps, State Department, Sugar Bounties, Supreme Court, Surety Companies, Swamp Lands, Taxation, Telegraph, Telephone, Cable and Electric Lines, Terms of Court, Territorial Courts, Timber Lands and Forest Reserves, Tonnage Duties, Town Sites, Trade Marks, Trade Unions.

Volume 8 of this series is a useful compendium of other federal enactments and executive manifestos. It contains the Declaration of Independence, the Articles of Confederation, the Ordinance for the Government of the Northwest Territory, the Constitution of the United States, the Amendments to the Constitution, an analytical index to the Constitution, a monograph on the growth of the Constitution in the Federal Convention of 1787, an article on Constitutional Construction and Interpretation, and, finally, a splendid system of annotations on the various provisions of the constitution and its amendments.

This compilation of federal statutes and constitutional provision is, in addition to the accessibility of its arrangement, carefully and exhaustively annotated, all of which, it is needless to say, makes them of considerable practical value to the profession.

Published by the Edward Thompson Company, Northport, N. Y.

BOOKS RECEIVED.

A Treatise on the Law of Crimes. By Wm. L. Clark and Wm. L. Marshall. Second Edition, by Herschel Bouton Lazell. St. Paul. Keefe-Davidson Co., 1905. Sheep, pp. 940. Price \$6.00. Review will follow.

A Selection of Cases on Domestic Relations and the Law of Persons. By Edwin H. Woodruff, Professor of Law in the College of Law, Cornell University. Second Edition, Enlarged. New York. Baker, Voorhis & Company, 1905. Canvas, pp. 639. Price \$5.00. Review will follow.

Bender's National Lawyers' Diary, 1906. From January 1, 1906, to February 1, 1907. Published Annually. Third Year. Price \$2.00. Albany, N. Y. Matthew Bender and Company, 1905.

The Law of Fire Insurance. By George A. Clement, of the New York Bar. Editor of the New York Annotated Code of Civil Procedure and Fire Insurance Digest. In two volumes. Vol. 1, as a valid contract in event of fire and adjustment of claims thereunder. Vol. 2, as a void contract, and in both volumes the conditions of the contract as affected by construction, waiver, or estoppel. Including miscellaneous provisions, and an analysis and comparison of the various standard forms, all reduced to rules, with the relevant statutory provisions of all the states. New York. Baker, Voorhis & Company, 1905. Sheep, pp. 924. Price \$6.30. Review will follow.

'MURDER OF THE LAW.'

The Court (Judge Kavanagh). I will allow you \$480 for your services in the matter.

Attorney. If your honor please, I think my bill should be allowed in full—\$600. Probably your honor has omitted a very important item, the work done on Sunday.

The Court. I did not count that. You should have been attending to your religious duties on that day.

Attorney. I esteemed it a religious duty to defeat these scoundrels.

The Court. For that you get your reward hereafter. Mr. Clerk, enter the attorney's compensation "180 here, \$120 in heaven."

Attorney. But, your, honor, what security have I that the order will be there recognized?

Court. Never mind; I will be there, and if necessary I will have you sent for.—*Chicago Inter-Ocean*.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

CALIFORNIA.....	31, 45
GEORGIA.....	34
INDIANA.....	3, 18, 36
IOWA.....	24, 25, 26
MICHIGAN.....	6, 20, 21, 27, 42, 44
MONTANA.....	35, 45
NEW MEXICO.....	17
OKLAHOMA.....	12
OREGON.....	5
SOUTH CAROLINA.....	38
UNITED STATES C. C.....	1, 19, 22, 28, 29, 30, 39, 40, 41
U. S. C. C. of APP.....	2, 4, 7, 14, 15, 16, 32, 33, 37
UNITED STATES D. C.....	8, 9, 10, 11, 13
WASHINGTON.....	28

1. ALIENS—Deportation of Chinese Wife.—The marriage of a Chinese slave girl, whose entry into the United States was secured by fraud, to a Chinese laborer resident in this country, held no defense to proceedings for her deportation.—United States v. Ah Sou, U. S. C. C. of App., Ninth Circuit, 138 Fed. Rep. 775.

2. AMBASSADORS AND CONSULS—Liability of Surety on Bond.—The surety on the bond of a consular officer cannot be held liable for the statutory penalty incurred by the principal, under Rev. St., § 1728, for charging excessive fees, where such fees, including the excess, have been charged against him in his account and paid to the treasury department.—United States v. Ballantine, U. S. C. C. of App., Second Circuit, 138 Fed. Rep. 312.

3. APPEAL AND ERROR—Assignments of Error.—Action of master commissioner in rulings on evidence held not assignable as error, but merely refusal of the court to

correct any error therein.—St. Joseph Mfg. Co. v. Hubbard, Ind., 75 N. E. Rep. 17.

4. APPEAL AND ERROR—Grounds for Dismissal.—It is not ground for the dismissal of an appeal that decrees in other suits between the parties involving the same issues were entered subsequent to the one appealed from and based upon that decree, from which no appeals were taken.—Copper River Min. Co. v. McClellan, U. S. C. C. of App., Ninth Circuit, 138 Fed. Rep. 333.

5. APPEAL AND ERROR—Motion to Dismiss.—A motion to dismiss because the appellant had obtained all the relief demanded, involving the merits, will be continued until submission of the appeal on the merits.—Multnomah County v. White, Oreg., 81 Pac. Rep. 388.

6. APPEAL AND ERROR—Order Directing Verdict.—Where a verdict is directed for defendant, the question on appeal is whether, considering all the evidence in plaintiff's favor is true, it fails to make a *prima facie* case.—Robinson v. Ward, Mich., 104 N. W. Rep. 378.

7. BANKRUPTCY—Alias Citation.—Where appellant's counsel made no application for an alias citation to bring in necessary parties to an appeal until two full terms had elapsed and the appeal had become inoperative as to them, the defect could not be cured.—Gray v. Grand Forks Mercantile Co., U. S. C. C. of App., Eighth Circuit, 138 Fed. Rep. 344.

8. BANKRUPTCY—Claims Against Estate.—Where a claim against a bankrupt's estate was in proper form and duly verified, except in particulars waived, the burden of proof was shifted to the objectors.—In re Carter, U. S. D. C., W. D. Ark., 138 Fed. Rep. 846.

9. BANKRUPTCY—Effect of Filing Petition.—The filing of a bankruptcy petition and a bankruptcy adjudication held not to prevent existing creditors from proceeding to reduce their claims to judgment and execution against the holder of an unfiled chattel mortgage executed by the bankrupt.—In re Beede, U. S. D. C., W. D. N. Y., 138 Fed. Rep. 411.

10. BANKRUPTCY—Objections to Discharge.—A bankrupt, though entitled to file papers in resistance of specifications against his discharge, is not bound to do so.—In re Hendrick, U. S. D. C., D. Conn., 138 Fed. Rep. 473.

11. BANKRUPTCY—Title to Uncompleted Vessels in Shipyard.—The title to vessels which at the time of bankruptcy were in the bankrupt's shipyard in various stages of construction under contracts requiring payments to be made as the work progressed, which had been made, and providing that title should vest as such payments were made, held to be in the several petitioners for whom the vessels were being built.—In re MacDonald, U. S. D. C., D. Conn., 138 Fed. Rep. 463.

12. BILLS AND NOTES—Principal and Agent.—An agent who purchases a note with his principal's money, and has it indorsed by himself, may sue thereon in his own name.—Routh v. Kostachek, Okla., 81 Pac. Rep. 429.

13. CHATTTEL MORTGAGES—Failure to File.—Where a chattel mortgage, executed and delivered, was not filed within a reasonable time, and possession was not delivered, the mortgage was void as to all creditors of the mortgagor when existing or becoming such while the mortgage remained unfiled.—In re Beede, U. S. D. C., N. D. N. Y., 138 Fed. Rep. 441.

14. COLLISION—Tugs and Tows Meeting.—Two tugs, each with two scows in tow *tandem* on long hawsers, both held in fault for a collision between the tugs when meeting in upper New York Bay.—The Bee, U. S. C. C. of App., Second Circuit, 138 Fed. Rep. 303.

15. COMMERCE—Findings of Commissions.—The mere opinions of the interstate commerce commission are inadmissible in an action brought for the enforcement of an order of pecuniary reparation.—Western New York & P. R. Co. v. Penn Refining Co., U. S. C. C. of App., Third Circuit, 137 Fed. Rep. 343.

16. CONTRACTS—Conclusive Effect of Engineer's Final Acceptance.—To destroy conclusive character of engineer's estimate of the amount and character of the work, gross mistakes imply bad faith.—Guild v. Andrews, U. S. C. C. of App., Eighth Circuit, 137 Fed. Rep. 369.

17. CONTRACTS—Non-negotiable Instruments.—A non-negotiable instrument, not under seal and containing no recital of a consideration, does not import one.—*Joseph v. Catron, N. Mex.*, 81 Fed. Rep. 489.

18. COUNTIES—Enjoining Letting of Contract to Build Court-House.—Taxpayers may enjoin county board of commissioners from contracting to build a court-house, for which no valid appropriation has been made.—*State v. Board of Comrs. of Newton County, Ind.*, 74 N. E. Rep. 1091.

19. DEATH—Measure of Damages.—Under a statute authorizing a recovery for wrongful death, a recovery held limited to the pecuniary assistance the jury believes the next of kin would have received from deceased, had he lived.—*Hirschkovitz v. Pennsylvania R. Co.*, U. S. C. C., S. D. N. Y., 188 Fed. Rep. 438.

20. DEEDS—Reservations.—A reservation of a right of way in a deed held inoperative, because attempting to reserve a right of way over land having no existence in fact.—*O'Neil v. Potter, Mich.*, 104 N. W. Rep. 396.

21. EMINENT DOMAIN—Damage by Railroad Embankment.—A person excluded from a city lot by an embankment constructed by a railway company on its right of way held entitled to recover the damages sustained.—*Hyman v. Ann Arbor R. Co., Mich.*, 104 N. W. Rep. 376.

22. EQUITY—Oral Examination of Foreign Witness.—Where complainants' notice for taking testimony signifies a desire that the testimony be taken orally, defendants would be permitted to cross examine complainant's foreign witness orally.—*Edison Electric Co. v. Westinghouse, Church, Kerr & Co., U. S. C. C., D. N. J.*, 188 Fed. Rep. 460.

23. EVIDENCE—Competency of Witness as to Value.—In replevin, a witness, stating that she knew the cost of the articles and their value, was competent to testify as to the values.—*Glass v. Buttner, Wash.*, 81 Fed. Rep. 699.

24. EVIDENCE—Foreign Judgments.—Foreign justice's judgment, certified in accordance with Code, § 464, is properly authenticated for use in the courts of this state, regardless of the statutory provisions of the foreign state.—*Morrison Mfg. Co. v. Rimerman, Iowa*, 104 N. W. Rep. 279.

25. EVIDENCE—Negligent Railroad Fires.—Question of expert as to escape of fire above the netting in the front of an engine held competent.—*German Ins. Co. v. Chic ago & N. W. Ry. Co., Iowa*, 104 N. W. Rep. 361.

26. FORCIBLE ENTRY AND DETAINER—Action to Recover Possession.—An action of right to recover possession of real estate will only lie on behalf of one holding the legal title, with right to immediate possession.—*Marks v. McGookin, Iowa*, 104 N. W. Rep. 378.

27. FRAUDS, STATUTE OF—Executor Contract.—An executor contract to purchase certain land, void under the statute of frauds, held insufficient to sustain an estoppel to preclude the vendee from acquiring an adverse title.—*Ball v. Harpham, Mich.*, 104 N. W. Rep. 358.

28. HABEAS CORPUS—Commitment by Legislative Committee.—A legislative committee, improperly appointed, held without jurisdiction to incarcerate a witness for his refusal to appear in obedience to a subpoena.—*Ex parte Caldwell, U. S. C. C., N. D. W. Va.*, 188 Fed. Rep. 487.

29. HABEAS CORPUS—Commitment Under Civil Process.—A writ of *habeas corpus* may be issued out of the federal courts to inquire into the cause of a commitment under a civil, as well as a criminal, process.—*Ex parte Caldwell, U. S. C. C., N. D. W. Va.*, 188 Fed. Rep. 487.

30. JUDGMENT—Suit to Set Aside for Collusion.—The exploitation of a collusive decree adjudging the validity of a void patent does not entitle one not a party to have the same set aside after a number of terms have passed, nor to injunctive relief.—*Union Waxed & Parchment Paper Co. v. Sevigne Bread Wrapper Co., U. S. C. C., D. Ver.*, 188 Fed. Rep. 415.

31. MASTER AND SERVANT—Liens.—A distiller employed at a monthly wage held, not entitled to a common law lien on brandy distilled for the amount due him for wages and for fruit sold by him to his employer.—*Michaelson v. Fish, Cal.*, 81 Fed. Rep. 661.

32. MUNICIPAL CORPORATIONS—*Bona Fide* Purchasers of Bonds.—*Bona Fide* purchasers of municipal bonds take with notice of the law under which the bonds were issued.—*Wright v. East Riverside Irr. Dist., U. S. C. C. of App., Ninth Circuit*, 138 Fed. Rep. 313.

33. MUNICIPAL CORPORATIONS—Change of Street Grade.—Where a change of street grade will result in damage, it is proper to consider the cost of adjusting the property and buildings to the new grade, together with damages to trees, etc.—*City of Seattle v. Board of Home Missions of Methodist Protestant Church, U. S. C. C. of App., Ninth Circuit*, 138 Fed. Rep. 307.

34. MUNICIPAL CORPORATIONS—Special Injury by Abandonment of Street.—One whose property rights will be injuriously affected by the unauthorized abandonment of a street can sue to prevent the infliction of any special injury.—*Coker v. Atlanta, K. & N. Ry. Co.*, Ga., 51 S. E. Rep. 481.

35. PARTNERSHIP—Actions Against Copartners.—Neither an individual partner nor a purchaser of his interest can sue the copartners at law to recover such individual's share of the firm assets.—*Doll v. Hennessy Mercantile Co., Mont.*, 81 Fed. Rep. 625.

36. REFERENCES—Exceptions to Report and Findings.—A general exception to "report and findings" of master held insufficient.—*St. Joseph Mfg. Co. v. Hubbard, Ind.*, 75 N. E. Rep. 17.

37. REFERENCE—Form of Taking Testimony.—Under the Code of Alaska, an order of reference need not require that the witnesses who testify before the referee shall read over and subscribe their testimony.—*Copper River Min. Co. v. McClellan, U. S. C. C. of App., Ninth Circuit*, 138 Fed. Rep. 338.

38. STATUTES—Amendment of Charters.—Act Feb. 20, 1902 (23 St. at Large, p. 1168), incorporating a union depot company, held not a violation of Const. art. 9, § 2, prohibiting the amendment of railroad charters by special act.—*Riley v. Charleston Union Station Co., S. Car.*, 51 S. E. Rep. 485.

39. TAXATION—Suit to Set Aside Tax Deed.—In a suit to set aside a tax deed, costs would not be awarded to either party, where it was determined that the deed was void, because the property was not subject to assessment.—*Barnes v. Bee, U. S. C. C., N. D. W. Va.*, 188 Fed. Rep. 476.

40. TRADE UNIONS—Breach of Contract.—A suit for breach of contract by an unincorporated local labor union held improperly brought against four of its members, individually and for themselves and others as officers and members of the union.—*Ehrlich v. Willenski, U. S. C. C., E. D. Penn.*, 188 Fed. Rep. 425.

41. TRADE MARKS AND TRADE NAMES—Right of Part Purchaser to Appropriate Name of Springs.—A purchaser of a portion of lands, on which were springs known as "Healing Springs," held not entitled to the exclusive use of such name as against a purchaser of the balance of the land and springs.—*Virginia Hot Springs Co. v. Hegeman & Co., U. S. C. C., S. D. N. Y.*, 188 Fed. Rep. 855.

42. TRUSTS—Transactions with Beneficiaries.—Where sale of property from trustee to beneficiaries was conducted fairly, beneficiaries could not, after lapse of four years, repudiate the transaction and have the sale set aside.—*Skelding v. Dean, Mich.*, 104 N. W. Rep. 410.

43. WATERS AND WATER COURSES—Irrigation.—An appropriator of water cannot increase the amount to which he is entitled by using an amount in excess of his appropriation.—*Sayre v. Johnson, Mont.*, 81 Fed. Rep. 389.

44. WATERS AND WATER COURSES—Negligence Causing Injury to Mill.—A miller, compelled to shut down his mill by reason of defendant's negligence, held entitled to damages.—*Michigan Paper Co. v. Kalamazoo Valley Electric Co., Mich.*, 104 N. W. Rep. 387.

45. WILLS—Residuary Clause.—Under a will, certain property held a part of the residuary estate in case an attempted disposition of it should be held void as creating a perpetuity.—*O'Connor v. Murphy, Cal.*, 81 Fed. Rep. 406.

INDEX-DIGEST

TO THE EDITORIALS, NOTES OF RECENT DECISIONS, LEADING ARTICLES, ANNOTATED CASES, LEGAL NEWS, CORRESPONDENCE AND BOOK REVIEWS IN VOLUME 61.

A separate subject-index for the "Digest of Current Opinions" will be found on page 505, following this Index-Digest.

ACCIDENT,

injury to a passenger from accidental discharge of pistol in hands of a third party, 142.

ACCIDENT INSURANCE,

recovery where disease is a concurrent cause of death or accident, 82.
what constitutes an abandonment of an occupation, 402.

ACCORD AND SATISFACTION,

acceptance of sum tendered in full of account, 105.

ACTIONS,

as to actions by unborn infants, See Parties.
although the acts of two parties contributed to the injury, the acts being independent of each other, cannot be joined, 322.

ADMINISTRATION,

administration of estates of absent persons, 202.

ADVERSE POSSESSION,

when the question of abandonment is a serious one, 243.

ADVERTISEMENTS,

city ordinances affecting advertisements and billboards, 233.

AGISTER'S LIEN,

necessity of express agreement at common law, 122.

APPEAL AND ERROR,

the practice in the courts of appeal of some states of judges passing on their own opinions in cases where there have been petitions for rehearing filed, 121.

questions not raised on original hearing will not be considered on a rehearing, 382.

ARBITRATION,

international court of arbitration, 346.

ASSAULT AND BATTERY,

surgical operation unauthorized, 242.

ATTORNEY AND CLIENT,

summary jurisdiction of courts over attorneys, 141.

when an attorney who has been disbarred will be reinstated, 343.

when attorneys' fees may be added to the actual damages, 346.

AUTOMOBILES,

rights of pedestrians as against the automobile, 114.

liability of owner of automobile for damages resulting from its operation by another, 203.

the legal rights of automobile drivers upon the public streets and highways, 464.

BANKRUPTCY,

under the present bankruptcy act a claim founded upon the indorsement of a promissory note cannot be proved against a bankrupt's estate, 201.

when partnership and individual assets amount to more than debts, petition will be dismissed, 264.

BAWDY HOUSES,

restraining maintenance of house of prostitution, 64.

BILL BOARDS,

See Advertisements.

BILLS AND NOTES,

effect of payment of a promissory note at place of payment named in the instrument, 166.

a person who signs a negotiable instrument in blank before delivery is liable as an indorser, 304.

use of fictitious names as affecting validity of instrument, 392.

BOOKS RECEIVED,

16, 73, 94, 114, 194, 254, 314, 354, 394, 413, 473, 498.

BROKERS,

real estate agent purchasing of principal having already arranged to sell to third party, 342.

BUILDING CONTRACTS,

stipulations for penalties, 372.
damages for delay in work, limited to those actually sustained, and not amount of penalty, 423.

CARRIERS,

when negligence of carrier will render him liable for loss of goods caused by act of God, 84.

injury to a passenger from accidental discharge of pistol in hands of a third party, 142.

when delivering carriers are responsible for loss of goods, 348.

when consignee may sue connecting carrier for damages, 351.

regulation of freight rates, 428.
judicial determination of the reasonableness of freight rates, 432.

CIGARETTE,

Indiana anti-cigarette law, 1.

COMMERCE,

municipal ordinances relating to materials entering into public work which interfere with interstate commerce and the privileges or immunities of citizens of other states, 65.

local interference with interstate commerce as illustrated by license for privilege of selling goods, 66.

municipal ordinances requiring all stone used in public work to be dressed in the state, 67.

COMMON LAW,

the common law in federal jurisprudence, 123.

CONSPIRACY,

whether a strike to enforce an illegal demand is a conspiracy, 421.

CONSTITUTIONAL LAW,

Indiana anti-cigarette law, 1.

in how far many acts of the legislature be made contingent upon being accepted by popular vote, without violating the principle that legislative power cannot be delegated, 3.

the constitutionality of a statute authorizing the erection of telegraph poles on the public highway without compensation to the abutting property owner, 24.

right to hold religious exercises and to read the Bible in the public schools, 49.

municipal ordinances relating to materials entering into public work which interfere with interstate commerce and the privileges or immunities of citizens of other states, 65.

municipal ordinances requiring all stone used in public work to be dressed in the state, 67.

construction of reservation of power to change franchise conditions by municipal corporation, 170.

legislative and judicial encroachments on constitutional provisions, 181.

restricting competition in contracts for public work—test of validity, 204.

appropriation for militia as "necessary expense" of government, 221.

city ordinances affecting advertisements and bill boards, 233.

validity of state inspection laws, 270.

the constitutionality of the requirement of notice of injury before suit against a municipality, 411.

service on corporations by service on public official, 468.

CONSTITUTIONAL LAW—Continued.

power of state to compel a corporation to appoint some state officer agent with power to accept service of process and notice, 469.

liberty of contract, 483.

liberty of contract implies that business relations must be voluntary, 484.

powers of parliament, congress and state legislatures, to control the freedom of contract, 485.

the privilege of contracting is both a liberty and a property right, 485.

the right to pursue a trade or calling includes the right to contract, 486.

labor and vocation are property, 486.

depriving a person of the right of contract deprives him of property, 489.

contractual rights of corporations, 490.

paternalism in government—sumptuary laws, 493.

limitation of the right to contract must rest upon some substantial basis, 494.

recent decisions on the constitutionality of game laws, 498.

CONTEMPT.

unequivocal answers under oath in contempt proceedings filed by contemnor denying guilt conclusive and may not be traversed, 21.

supersensitiveness of courts in contempt cases, 31.

CONTRACTS.

as to building contracts, See Building Contracts.

restricting competition in contracts for public work—test of validity, 204.

where there is a breach of a contract which may be regarded as total, is the injured party prevented from recovering future damages by bringing an action only for past damages, where the time for full performance has not arrived, 281.

are there breaches of contract which would justify parties in regarding them as rescinded which at the same time would not justify the right to regard them as wholly abandoned, 301, 353.

use of fictitious names as affecting validity of instrument, 392.

recovery of consideration for non-performance, 454.

rescission of contract after completion, 472.

liberty of contract, 483.

the privilege of contracting is both a liberty and a property right, 485.

limitation of the right to contract must rest upon some substantial basis, 494.

CONVERSION.

the measure of damages in conversion by a stock broker, 202.

COPYRIGHT.

protection of author against insolvency of publisher, 253.

CORPORATIONS.

trust deeds passing property to trustee in bankruptcy, 164.

relief granted minority stockholders on the ground of fraud, 308.

service on corporations by service on public officials, 468.

power of state to compel a corporation to appoint some state officer agent with power to accept service of process and notice, 469.

contractual rights of corporations, 490.

COURTS.

as to federal jurisprudence, See Federal Courts.

power of court to act upon its own motion, 274.

CRIMINAL LAW.

criminal liability of an inciter or abettor of suicide, 496.

DAMAGES.

mental anguish as an element of damage, 146.

sentimental damages, 152, 253.

the measure of damages in conversion by a stock broker, 202.

right of courts to interfere with the determination of the amount of damages fixed by a jury, 286.

under the code procedure an action for injunction and damages for personal injuries arising out of the same transaction

DAMAGES—Continued.

are properly united in one action, 312.

damages for fraud and deceit in mis-stating the number of acres in a tract of land sold, 332.

when attorneys' fees may be added to the actual damages, 346.

damages for delay in work, limited to those actually sustained, and not amount of penalty, 423.

the doctrine of contra spoliatorum omnia praesumuntur, 441.

DEATH BY WRONGFUL ACT.

Lord Tenterden's Act in the United States, and an important omission therefrom, 344.

DEEDS,

use of assumed names as grantor and grantee, 390.

use of fictitious names as affecting validity of instrument, 392.

construction of restrictions in a deed, 482.

DESCENT AND DISTRIBUTION,

the devolution of Indian lands to non-citizen relations by marriage, 261.

DIGEST OF CURRENT OPINIONS.

16, 34, 56, 73, 95, 114, 138, 153, 174, 195, 214, 234, 255, 276, 295, 314, 335, 354, 376, 395, 414, 434, 454, 474, 499.

DIVORCE,

duty of injured party to effect a reconciliation, 342, 452.

anomus non revertandi as an essential element in securing a decree of divorce on the ground of desertion, 452.

EQUITY,

the juvenile court as a branch of equity, 101.

power of court of equity to compel a defendant to make disclosures as to source of title and to grant relief upon such disclosures, 163.

restoration of the status quo in suing on a rescission, 182.

power of chancery to control minors, 289.

jurisdiction of equity to enjoin the enforcement of judgments, 401.

effect of a failure to object to a trial by jury to a suit in equity, 445.

ESCROW,

what is a sufficient performance of conditions on which property is to be delivered, 214.

EVIDENCE,

oral agreement to indemnify not within the statute of frauds, as a general rule, 303.

EXECUTIONS,

validity of proceedings supplementary to execution after judgment because subsequently invalid, 212.

EXECUTORS AND ADMINISTRATORS,

disqualification of executors on other than statutory grounds—personal and immoral unfitness, 106.

administration of estates of absent persons, 202.

EXTRADITION,

necessity for hearing by governor, 223.

FEDERAL COURTS,

the common law in federal jurisprudence, 123.

FENCES,

duty to fence station grounds, 14.

character of place as a station and extent of business transacted to exempt a railroad from fencing track, 15.

FINDING,

see Lost and Found.

FIRE INSURANCE,

recent fire insurance decisions which add uncertainty to future litigation involving the construction of policy provisions, 304.

stipulations in fire insurance contracts affecting the assured's right of recovery, 323.

federal control of insurance, 384.

FRAUD AND DECEIT,

rule of caveat emptor as applied to sales of land, 327, 332.

FRAUDULENT CONVEYANCES,

remedies of debtor, 31.

election of judgment creditor of fraudulent vendor to set aside conveyance or levy on land and sell for the payment of debt, 31.

GAME AND GAME LAWS. the right of a land owner to kill game, 412. constitutionality of prohibition of sale of game captured in another state, 492. recent decisions on the constitutionality of game laws, 498.

GARNISHMENT. jurisdiction over garnishee temporarily within state, 42. judgment against garnishee as bar to action on debt, 42. duty of garnishee to give notice to principal debtor, 42. exit of the doctrine of situs, 265.

GAS AND OIL. do gas and oil contracts or leases convey or affect such an interest in real estate as to come within the meaning of the statute of frauds requiring all conveyances of real estate or an interest therein, or an assignment thereof, to be in writing, 224.

HIGHWAYS. distinction between locomotive whistles and whistles on stationary engines, as to liability for frightening horses, 381. the legal rights of automobile driver upon the public streets and highways, 464.

HOMICIDE. how far one may resist arrest by killing an officer, 230. killing in self-defense of officer attempting an unlawful arrest, 232.

HUMOR OF THE LAW. 16, 56, 73, 95, 138, 153, 174, 194, 214, 234, 254, 276, 294, 314, 334, 354, 376, 394, 413, 434, 454, 474, 499.

HUSBAND AND WIFE. when the presumption of gift arises between husband and wife, 383.

INDIANS. the devolution of Indian lands to non-citizen relations by marriage, 261.

INFANTS. as to actions by unborn infants, See Parties.

INJUNCTION. restraining maintenance of house of prostitution, 64.

INNKEEPERS. when will an innkeeper's lien for the board and lodging of his guest extend to the property of third persons brought to the hotel by the guest, 43. extraordinary liability of innkeepers, 44.

INTERNATIONAL LAW. international court of arbitration, 346.

INTOXICATING LIQUORS. C. O. D. shipments between different points in the same state, as affecting the enforcement of local option laws, 61. the legal effect of the transfer of a license to sell liquor, 108. validity of state inspection laws, 270.

JUDGES. some reasons why the opinions of the judges in some states are not more carefully considered by the whole court, 321.

JUDGMENTS. jurisdiction over garnishee temporarily within state, 42. collateral attack of judgments in supplemental proceedings, 210. validity of proceedings supplementary to execution after judgment because subsequently invalid, 212. jurisdiction of equity to enjoin the enforcement of judgments, 401.

JURIES. jury trials, 174. Is it error to compel a litigant to exhaust his peremptory challenges in order to remove a juror, where such litigant proceeds to trial with the jury finally selected, 461.

JUVENILE COURTS. the juvenile court as a branch of equity, 101. the great importance of juvenile court jurisdiction, 161. the juvenile court of Colorado, 234, 253. power of chancery to control minors, 239. a day with Judge Mack in the juvenile court of Chicago, 361. letter from Hon. Willis Brown, Judge of the juvenile court of Salt Lake City, on the juvenile court of Utah, 375.

LANDLORD AND TENANT. liability for injury through non-repair, 263.

LAW AND LAWYERS. the difference between Mr. Folk of Missouri and Mr. Jerome of New York on the question of law enforcement, 41. French barristers and their fees, 71. "you never can tell," 151. George Peck, head of the American Bar Association, 334.

LIBEL AND SLANDER. letters of layman concerning pastor, as privileged communications, 134. privileged communications arising from a duty imposed by membership in some organization or association, 136.

LICENSES. the legal effect of the transfer of a license to sell liquor, 108.

LIENS. as to innkeeper's lien, See Innkeepers.

LIFE INSURANCE. federal control of insurance, 384.

LIMITATIONS. short statutes of limitation affecting actions against municipalities, 351.

LITERARY PROPERTY. protection of author against insolvency of publisher, 253.

LIVERY STABLE KEEPER. See Agister's Lien.

LOST AND FOUND. the right to a pearl found in an oyster, 23. finding is keeping, 137.

MASTER AND SERVANT. the duty of master to warn inexperienced servant of dangerous employment, 103. changing flagman's box during his absence, for repair, being replaced too near track and struck by train, 166. right of workman putting himself in a place of danger to expect a customary warning, 182. liability of owner of automobile for damages resulting from its operation by another, 203. assumed risk in riding on the outside of a car, 247. whether servant is guilty of contributory negligence by putting himself in dangerous position where a safer place is provided, 250.

MECHANICS' LIENS. attorneys' fees made part of a lien, 405.

MILITIA. appropriation for militia as "necessary expense" of government, 221.

MINES AND MINING. as to gas and oil mining, See Gas and Oil.

MONOPOLIES. the mortality of trusts, 193.

MUNICIPAL CORPORATIONS. requisite statutory notice of injury, 2. municipal ordinances relating to materials entering into public work which interfere with interstate commerce and the privileges or immunities of citizens of other states, 65. municipal ordinances requiring all stone used in public work to be dressed in the state, 67. construction of reservation of power to change franchise conditions by municipal corporation, 170. the initiative and referendum in passing on municipal questions, 172. restricting competition in contracts for public work—test of validity, 204. city ordinances affecting advertisements and bill boards, 233. notice of injury and its sufficiency, 409. the necessity of notice of claim for injury in actions against municipal corporations, 411. the constitutionality of the requirement of notice of injury before suit against a municipality, 411. repeal of ordinances by statute, 481.

NEGLIGENCE. when negligence of carrier will render him liable for loss of goods caused by act of God, 84. contributory negligence in receiving an injury in an attempt to save another's life, 84.

NEGLIGENCE—Continued.

injury to a passenger from accidental discharge of pistol in hands of a third party, 142.
 the legal effect of the use of the terms wilful, abandoned, reckless, and wanton neglect, 150.
 right of workman putting himself in a place of danger to expect a customary warning, 182.
 question of negligence from leaving building materials in the street and injury to child in consequence, 189.
 the doctrine of imputed negligence as between an infant non sui juris and its parent or guardian, 244.
 whether servant is guilty of contributory negligence by putting himself in dangerous position, where a safer place is provided, 250.
 last chance rule affecting the doctrine of contributory negligence, 283.
 negligence of parent not imputed to child, in Minnesota, 294.
 actions by unborn infants, 364.
 right of unborn infant to recover for injuries to its person, 365.
 distinction between locomotive whistles and whistles on stationary engines, as to liability for frightening horses, 381.
 the doctrine of assumed risk and contributory negligence as defenses to actions for damage resulting from a failure to comply with express statutory provisions, 446.

NUISANCES,
 court has no power to enjoin the braying of a Jackass, 213.

OIL.

See Gas and Oil.

PARTIES,

actions by unborn infants, 364.

PERPETUITIES,

application of the rule against perpetuities to options to purchase, 374.

PHYSICIANS AND SURGEONS,

statutes regulating medical practice, 424.

PLEADING.

under the code procedure an action for injunction and damages for personal injuries arising out of the same transaction are properly united in one action, 312.
 although the acts of two parties contributed to the injury, the acts being independent of each other, cannot be joined, 322.

POLICE POWER.

Indiana anti-cigarette law, 1.

POWERS,

powers may be created by will, but such powers are to be governed by the intent of the testator, 70.

PRINCIPAL AND AGENT,

when is notice to an agent notice to his principal, 183.
 real estate agent purchasing of principal having already arranged to sell to third party, 342.

PUBLIC SCHOOLS,

right to hold religious exercises and to read the Bible in the public schools, 49.

RAILROADS,

duty to fence station grounds, 14.
 character of place as a station and extent of business transacted to exempt a railroad from fencing track, 15.
 railroad rebates and favoritism, 71.
 injury to child on track, 149.
 regulation of freight rates, 428.
 judicial determination of the reasonableness of freight rates, 432.

REAL ESTATE BROKER.

See Brokers.

RECEIVERS,

what attorneys' fees constitute expense of receivership, 223.

REHEARING.

See Appeal and Error.

RELEASE,

general words of a release from injuries in a railroad accident, 143.
 the release of one joint tort feasor as a discharge to the others, 433.

RELIGION AND RELIGIOUS SOCIETIES,

right to hold religious exercises and to read the Bible in the public schools, 49.
 lawlessness of the church of England, 374.

RESCISSON,

restoration of the status quo in suing on a rescission, 182.

ROBBERY,

ownership of property in case of robbery, 213.

SITUS,

exit of the doctrine of situs, 265.

SPECIFIC PERFORMANCE,

when past performance entitles party to specific performance, 363.

STATUTE OF FRAUDS,

enforcement of parol trusts, 89, 92.
 oral agreement to indemnify not within the statute of frauds, as a general rule, 303.

promise to pay debt of another, when not within the statute, 404.

giving of possession is sufficient to enforce verbal contract for sale of real estate, 424.

STATUTES,

in how far may acts of the legislature be made contingent upon being accepted by popular vote, without violating the principle that legislative power cannot be delegated, 3.

to what extent the legislature may delegate its power to a board or commission, 393.

STREET RAILROADS,

injury to child on track, 149.

STRIKES,

See Conspiracy.

SUICIDE,

criminal liability of an inciter or abettor of suicide, 406.

TELEGRAPHS AND TELEPHONES,

the constitutionality of a statute authorizing the erection of telegraphic poles on the public highway without compensation to the abutting property owner, 24.
 contract as to rates to citizens where city grants franchise in consideration thereof, 443.

TORTS,

the release of one joint tort feasor as a discharge to the others, 433.

TRIAL AND PROCEDURE,

the summing up by the presiding judge at the trial, 213.
 the necessity of making exceptions to every ruling of the court, 413.
 is it error to compel a litigant to exhaust his peremptory challenges in order to remove a juror, where such litigant proceeds to trial with the jury finally selected, 461.

TRUSTS AND TRUSTEES,

a forgotten doctrine as to voluntary trusts, 173.

conveyance of land upon an oral trust, 312.
 application of the rule in Shelley's case to cases where particular "heirs" are designated, 463.

UNLAWFUL DETAINER,

the necessity of proper notice, 145.

USURY,

what does not constitute usury, 302.

WILLS,

construction of right of life tenant "to enjoy," 69.

powers may be created by will, but such powers are to be governed by the intent of the testator, 70.

the meaning of the word "attest" in the Illinois statutes relating to wills, 241.
 when trusts are void for failure to designate beneficiary, 285.

construction of term "dying without issue living at time of death," 322.
 legacies in satisfaction of obligations preserved from lapse, 362.

WORK AND LABOR,

whether a strike to enforce an illegal demand is a conspiracy, 421.

SUBJECT-INDEX

TO ALL THE "DIGESTS OF CURRENT OPINIONS" IN VOL. 61.

This subject-index contains a reference *under its appropriate head* to every digest of current opinions which has appeared in the volume. The references, of course, are to the pages upon which the digest may be found. There are no cross-references, but each digest is indexed herein under that head, for which it would most naturally occur to a searcher to look. It will be understood that the page to which reference, by number, is made, may contain more than one case on the subject under examination, and therefore the entire page in each instance will necessarily have to be scanned in order to make effective and thorough search.

Abandonment, assertion that another is the owner, 195.

Abatement and Revival, conversion of good will of defunct corporation, 395; death of officer sued for official misconduct, 434; death pending suit to redeem from foreclosure, 16; lis pendens, 315; marriage of female pending action for assault, 434; trover and conversion, 214; burden of proving false statements in application, 395; erroneous statement against interest, 153; employer's liability contract, 295; immediate disability, 354; notice of injury, 354; term of policy, 255.

Accord and Satisfaction, acceptance of conditional tender, 434; acceptance of payment in full, 455; consideration, 414; good faith, 434; offer and acceptance, 300; plumbing bill as set off to rent, 175; retention of check, 255; written receipt, 360.

Account, account of jurisdiction, 235; parties, 175; pleading, 16; remedy at law, 255.

Account, Action on, evidence, 455; verdict where only one item is in dispute, 16.

Account Stated, correction, 195; promise to pay, 95; retention without bill without objection, 235; what constitutes, 56.

Acknowledgment, attack, 195; effect of failure to follow statutory requirements, 295; validity, 175; when taken outside of notary's county, 56.

Action, collision of train at crossing, 295; equitable estoppel, 295; foreclosure of mortgage, 214; injury to property in shipment, 474; invalid ordinance, 474; invasion of property rights, 16; joinder of causes, 335; misjoinder, 315; mistaken theory, 255; money had and received, 315, 360; petition for recovery of land, 315; right of privacy, 74.

Adjoining Landowners, use of land, 115.

Admiralty, effect of state law 74; evidence, 255; joinder of libelants in suits in rem, 34; libel for personal injuries, 376; maritime contract, 56; right of citizen to invoke, 455; suit to enforce statutory penalty, 115.

Adoption, age of party, 115; disinheritance of adopted child, 455; order amended nunc pro tunc, 214.

Adultery, living together, 315.

Adverse Possession, acknowledgment of title, 215; action to quiet real estate, 235; boundaries, 138; character of defendant's tenure, 175; color of title, 355; compensation, 195; constructive possession, 335; county school lands, 414; decision of agent, 74; deed from executor, 276; ejection, 115; evidence, 195; extent, 235, 474; forfeited lands, 255; knowledge of outstanding title, 74; land purchased at tax sale by wife, 376; overlapping surveys, 335; parol gift of land, 157; parol purchase, 414; presumption of possession, 414; proof, 354; right of way, 354; squatters, 157; substantial enclosure, 16; tacking, 474; trespass to try title, 175; void tax deed as color of title, 255; what constitutes, 276, 376, 395, 474.

Agriculture, money had and received, 295.

Aliens, adopted children of Chinese children, 138; deportation of Chinese wife, 499; rules of evidence in deportation proceedings, 56.

Alteration of Instruments, fraudulent removal of word trustee from deed, 325.

Ambassadors and Consuls, liability of surety on bond, 499.

Animals, agister's lien, 355, 360, 434; attractive nuisance, 56; construction of lease, 56; establishment of live stock, 315; impounding by de facto officer, 360; stock law, 255; tortious killing of domestic animal, 34; two-mile limit law, 434; wrongful killing of neighbor's sheep, 235.

Appeal and Error, absence of necessary party in mandamus, 115; abstract, 195; accord and satisfaction, 335; action for broker's commission, 295; action for statutory penalties, 136; adverse possession, 17; affirmance by equity divided court, 235; amending assignments of error, 455; amendment of answer, 2276; amendment of transcript, 34; amendment to conform with proof, 414; amount in controversy, 138; appeal for purpose of delay, 153; appeal from justice court, 395; appeal in civil action for assault, 395; appealable orders, 115; argument of counsel, 315; assigning errors and cross errors, 115; assignment of errors, 153, 175, 315, 499; assumed risk, 154; bar by limitation, 335; bill of exceptions, 35, 376; burden of proof, 315; clerical error in excepting to instruction, 315; collateral attack on judgment, 395; conciousness to conform with proof, 414; contributory negligence, 154; costs, 56, 74; cross-appeal, 195, 335; cross-examination by trial court, 175; defective summons, 175; definiteness as to assignment of error, 474; delay in delivering brief, 95; delay in filing transcript, 235; denial of jury trial, 95; discharge of garnishee, 355; discretion of court, 115; discretionary power in issuing injunctions, 74; effect of former dismissal, 255; effect of suit dismissed without prejudice, 315; entry of decree pending exceptions, 17; equity jurisdiction, 395; evidence, 315; evidence as to measurements, 138; evidence to establish will, 115; exceptions to instructions, 355; excessive damages, 74, 414; exclusion of evidence, 434; exemplary damages, 435; failure to except to instruction given, 315; failure to file briefs, 435; failure to include evidence, 17; failure to request special charge, 215; final judgment, 474; finality of judgment, 154; findings of court in equity suit, 17; findings of fact, 235; findings of fact, 17, 74, 154, 435; form of brief, 195; fraudulent deposits, 215; general assignment of error, 335; general exceptions to several instructions, 235; general verdict on several counts, 215; grant of new trial by trial Judge's successor, 56; grounds for dismissal, 499; harmless error, 255, 456; history of taxes as evidence to identify grantee, 395; hostile warning, 355; inadequacy of damages, 335; instructions in civil action for assault, 395; instructions where testimony is uncontested, 175; interlocutory orders, 17; intermediate orders, 154; irregularity in transfer of case, 255; judgment where only one issue is complained of, 315; jurisdiction on question of excessive verdict, 154; jurisdictional amount, 56; law of the case, 295; leading questions, 17; limitations as against omitted parties, 376; mandamus, 474; motion to dismiss, 315, 499; motion to retax costs, 57; necessity of sequestration after appeal taken, 315; necessity of signature to order granting appeal, 335; new

trial, 74; notice of appeal, 154; objections to evidence, 115; opening default judgment, 115; order directing verdict, 499; parties, 154; partnership dissolution, 335; pauper's oath, 57; permission to amend, 195; plea of privilege, 154; pleading, 474; pleading in replevin case, 154; points on appeal, 195; presumption, 195; presumption as to findings, 115; presumption as to instruction, 395; presumption as to regularity of judgment, 435; qualification of surety company of appeal bond, 355; questions for review, 315, 355, 474; questions not raised at trial, 355; reargument, 17; rendering final judgment, 474; *res judicata*, 34; reversal, 215; review of evidence, 315; review of findings, 215; review of order overruling demurrer, 255; revocation of allowance of appeal, 276; serving bill of costs, 355; statement on motion for new trial, 175; substituted record, 475; sufficiency of assignment of error, 455; sufficiency of bill of exceptions, 95; sufficiency of evidence, 13; supersedeas, 276; technical errors, 376; the law of the case, 195; theory of the case immaterial where judgment correct, 138; transcript of evidence, 138; *trial de novo*, 355; unlawful detainer, 175; violating rules as to briefs, 215; where error insures to benefit of appellant, 138; where preponderance of evidence is against verdict, 395; writ of error, 395.

Appearance, estoppel to deny, 235; waiver of objections, 115.

Arbitration and Award, burden of proving 175; rehearing, 34; valuers in executors sale of goods, 315.

Army and Navy, court martial, 215; pay of aid to Rear Admiral, 17; sea pay to shore duty, 74; the "boxer uprising," and court martial, 235.

Arrest, validity, 255; warrant, 95; punitive damages, 435.

Assault and Battery, argumentative instructions, 315; evidence, 215; self-defense, 475; words as a provocation, 276.

Assignments, contract to assign an account, 235; moneys to become due, 335; right of assignee, 235.

Assignment for Benefit of Creditors, consent of creditor, 355; effect of filing claim with assignee, 195; filing claims, 355; payment by mistake, 95; removal of assignee, 34.

Associations, action against member, 175.

Assumpst, Action on, contract as evidence of amount due, 215.

Asylums, quantum meruit for "keep of lunatic," 175.

Attachment, action on replevin bond, 235; collateral attack, 215; counterclaims for damages, 475; grounds, 316; liability of plaintiff for wrongful attachment, 475; rights of intervenor, 115.

Attorney and Client, admissions by an attorney as binding on client, 57; allowance of fee, 95; authority of attorney, 95, 455; authority to compromise claim, 395; bona fide purchaser of stock, 335; compromise of judgment, 215; contract to procure legislative action, 414; disbarment, 115, 355, 376, 435; effect of private frauds, 355; lien on client's papers, 414; purchase of client's land, 115; retainer, 235; right to compromise case, 175; suit to declare trust, 115; unauthorized compromise, 17; unauthorized extension of payment, 255; usage and custom 295; validity of transfer of property to attorney, 355.

Auctions and Auctioneers, disclosure of principal, 335.

Bail, appeal from commitment to reform school 34; *scire facias*, 34; validity of recognition, 255.

Bailment, lien of garage keeper, 475; lien for repairs, 435; loss by fire, 74; loss of baggage, 455.

Bankruptcy, action by trustee, 376; action by trustee to restrain collection of debt, 34; advancement as a fraudulent conveyances, 255; adverse claims, 455; adverse claims to property, 316; agent for collection, 74; appellate jurisdiction, 276; application for discharge, 34; assignments, 335; assignments, 414; assignment for benefit of creditors, 175; assignment of future wages, 355; attachments, 154; attachment, 255; averment of less than twelve creditors, 335; bankrupt's suit for services rendered prior to bankruptcy, 74; bona fide purchaser of note, 295; burden of showing insolvency, 35; business homestead, 34; cancellation of judgment, 195; chattel mortgaged property, 57; claims against estate, 499; claims of creditors, 475; community property, 475; composition, 235; concealment of assets, 155, 276; conditional sale, 255; construction company, 115; controversies between creditors, 235; costs on dismissal of involuntary proceedings, 276; counsel fees, 34; deposits in bank, 215; discharge, 155, 215, 377; designation of record, 376; domicile of corporation as affecting jurisdiction, 475; effect of bankrupt's death, 57; effect of discharge, 316, 355; effect of filing petition, 499; effect on lien claims, 414; effect where ordinance requires city employees to pay debts, 35; evidence to show insolvency, 57; examining of secured creditor, 35; exemptions under state law, 35; extension of time for application for discharge, 377; failure to give creditors correct address, 175; failure to keep books of account, 316; failure to record conditional sale, 35; findings of fact, 115; fraudulent concealment of property, 435; fraudulent conveyances, 215, 276; gift to wife, 35; individual liability of partner, 175; information in procedure, 235; insurance policies, 35; interest in an estate, 255; intervention, 435; jurisdiction of bankruptcy court to determine adverse claims, 355; jurisdiction of court of bankruptcy, 395; jurisdiction requiring payment of judgment, 395; knowledge of creditor, 256; laches in objecting to an allowed claim, 35; liens, 17, 455; mortgages, 455, 475; mortgage lien on after-acquired property, 74; national bank, 35; nature of proceedings to recover property, 57; negotiable papers, 35; new promise to pay, 295; objection to discharge, 115, 499; opposition to discharge, 316; persons engaged chiefly in farming, 455; petition to revise, 414; petition to vacate discharge, 35; pleading that books on account would incriminate, 57; preferences, 195; preferences, 35, 57, 74, 115, 215, 235, 256, 277, 395; proceeds of life insurance, 355; property held under conditional sale, 115; provable claims, 35, 235, 435, 455; recovery of funds, 316; reducing assets, 195; requiring payments from secured creditors, 475; review on appeal, 295; right of trustee to leased premises, 35; sale of assets, 377; sale of property discharged of liens, 255; selection of trustee, 235; special judgment, 355; stay of pending suits, 277; staying proceedings in distress for rent, 35; successive damages, 475; sufficiency of petition in involuntary proceedings, 35; surety as a creditor, 435; time for filing petition for discharge, 35; title of trustee, 17; title of trustee in choses of action, 396; title of uncompleted vessels in shipyard, 499; trading pursuits, 35; transfers in contemplation, 475; transfer of proceedings, 35; trustee, 195; trust funds, 435; trustee's title to books and papers, 35; uncanceled payments, 336; unsealed subpoena, 35; validity of bonds, 236; validity of chattel mortgage, 236, 277, 377; vender's liens, 455; verification of petition, 236; voluntary unincorporated associations, 455; where judgment is opened generally, 475.

Banks and Banking, a suit for deposit, 116; attorney's fees for collecting, 295; authority of cashier to extend payment of note, 316; diligence required in collecting on commercial papers, 155; executing note for railroad company, 175; fraud indicating sale of stock, 355; fraud of officer, 355; fraud of president, 215; limitation of actions, 116; married woman as stockholder, 116; payment on forged signature, 95; pledged stock, 475; presumption as to joint depositors, 57; rights of finder of note, 116; rights of objecting stockholders, 57; stoppage of payment of check, 435; unauthorized act of president, 415.

Benefit Societies, acceptance of amended by-laws, 475; assessments, 195; assignment, 196; beneficiaries, 176; by-laws as to suicide, 455; certificate, 215; conflicting indorsements, 236; death while under suspension,

196; defense of fraud, 155; delinquent payment of dues, 155; effect of subsequent by-laws on contract of insurance, 336; false answers in application, 57; place of contract, 415; premiums, 475; reinstatement, 17; restriction on actions, 176; service of process, 415; waiver of claim if death results from small-pox, 415.

Bigamy, instructions. 74.

Bills and Notes, action by holder of note as collateral, 74; accommodation indorser, 215; alteration, 435; attestation of mortgage by employee of mortgagor, 475; authority to transfer, 17; bank as collecting agent, 116; bona fide holders, 377; burden of showing failure of consideration, 277; burden of showing illegality, 57; co-makers, 176; consideration, 74, 256, 475; consideration for renewal note, 316; credit by wire, 435; defense against assignor, 36; defense of payment, 475; discounting bank a bona fide purchaser, 295; discounting bank as bona fide purchaser, 295; duress of wife, 36; duty of showing bona fides, 415; estoppel, 475; failure of consideration, 215, 316; limitations, 295; ineffective lien on homestead, 95; intention in assignment, 196; knowledge of defects, 455; law of foreign state, 475; liability of indorser on certificate of deposit, 455; liability of joint maker, 36; negotiability, 355, 377; notice of defect, 316; payment, 476; payment by indorsers, 74; payment presumed after ten years, 116 principal and agent, 499; renewal notes, 176; right of indorsees after maturity, 377; right to maintain action on note, 295; rights of parties under fraudulent draft, 236; set-off, 196; transaction with decedent, 355; transfer after maturity, 336; what constitutes bona fide purchaser, 138.

Bonds, consideration, 355.

Boundaries, absence of monument, 256; acquiescence, 277; deeds, 336; field notes, 57; government corners, 355; how determined, 256; inconsistent calls, 396; oral agreements, 215; original survey, 155; question of fact, 176; riparian owners, 215.

Breach of Marriage Promise, condonation, 396, 435; offer to marry after action began, 236.

Bribery, actual tender not necessary to constitute crime, 138; building inspector, 336; indictment, 155; instruction as to what constitutes, 155; legality of arrest, 155; variance of evidence, 155; who a peace officer, 155.

Bridges, breach of contract, 36; city's duty to inspect, 116; failure to maintain, 74; liability of municipality for injuries due to defect, 356; repairs, 476; sale, 196.

Brokers, burden of showing right to commissions, 116; commissions, 57, 116, 277, 336, 356; commissions conditioned on title passing, 95; commissions for sale of land, 17; duration of agency to sell land, 256; inconsistent positions, 75; insurance contracts, 75; margins, 256; non-delivery of stock, 435; option contract, 295; production of purchaser, 116; recovery of forfeit money, 476; right to commission, 236; sale of stock, 215; time of employment, 435; unreasonable printed conditions on back of order, 155.

Burglary, evidence, 295; evidence wrongfully obtained, 176; possession of stolen property, 75, 476.

Building and Loan Associations, insolvency, 74; loan of officer, 396; minimum premium, 215; payment to unauthorized officer, 116; representation of agent, 277.

Cancellation of Instruments, basis of equitable relief, 377; equitable relief, 396; leases, 316; mortgage, 155; quieting title, 356.

Carrriers, care required in carriage of passengers, 295; care required in operating passenger elevator, 435; care required of drunken passenger, 455; carriage beyond station, 415; collision with vehicle, 216; connecting carriers' negligence, 277; contract of carriage, 36; contract to furnish cars, 236; defective seats, 216; definiteness of negligence and ordinary care, 95; delay in shipment, 57; delay in transportation, 155, 216; delivery, 336, 396, 415; diligence in transporting cattle, 476; duty as warehouseman, 476; duty to awaken passenger, 57; duty to stop at station, 396; duty toward persons riding on freight trains, 356; elevators, 196; excessive verdict, 96; failure to read express receipts, 455; failure to water stock, 36; getting off car while moving, 196; injury to alighting passenger, 17, 57, 236; injury to care taker of live stock, 455; injury to freight through defect in car, 236; injury to goods in sealed cars, 476; injury to live stock in transit, 236; injury to passenger, 17, 36, 216, 277, 356, 277; injury to person riding on drover's pass, 116; jewelry as baggage, 277; jurisdiction, 176; liability for baggage, 455; liability for injuries to animals shipped, 216; liability of connecting carrier, 96; liability of initial carrier, 57, 476; liability of railroad company, 57; limiting liability, 96, 295, 356, 396; live stock shipment, 316, 396; loss of goods on connecting carrier, 155; measure of damages for delayed shipment, 176, 396; measure of damages for loss of goods, 435; mistake in contract of shipment, 396; negligent starting, 36; opportunity to alight, 176; overcharges, 196; passenger ivy poisoned after leaving wreck, 57; penalties for refusal to transfer passenger, 96; powers of railroad commission, 176; pleadings, 356; premature starting of car, 57, 155, 356; presumption of negligence, 155, 316, 456; reasonable time to alight, 96; rebilling rates, 256; representations of agent as to best route, 176; right to add additional freight, 75; right to direct route of transportation, 57; rights of excursionists, 415; round trip ticket, 36; rule requiring purchase of ticket, 476; shipment of cattle, 96; slippery condition of station platform, 256; special agreement limiting liability, 116; special damages for delay in transporting cattle feed, 277; strike as excuse in delay of cattle shipment, 256; through shipments, 277; time for filing claim for injury shipment, 256; uncontrollable events, 196; unissued stock, 75; unjust discrimination in rates, 256; unlawful arrest of passenger, 176; value of services, 236; watering stock with alkaline water, 96; what constitutes a passenger, 116.

Cemeteries, illegal use of money, 476; validity of by-laws, 415.

Certiorari, finality of decree below, 216; reception of evidence, 155.

Champtier and Maintenance, employer's liability, act, 295.

Charities, appointment of trustees, 396; devise to church, 156; dissolution and disposition of property, 476; unauthorized transfer of securities, 435.

Chattel Mortgages, attorney's fees, 476; conditional sale, 116; conversion, 356, 396; effect of alteration, 356; effect of delay in filing, 236; effect of part usury, 476; failure to record, 17, 36, 499; foreclosure, 396; ownership of property, 377; presumption of negligence, 456; rights of parties under sale, 316, 415; verbal reservation of title, 476.

Civil Rights, apartment, house, 336; separation of races in street cars, 435.

Clerk of Courts, duty to search records, 415.

Collision, excessive speed at night without lookout, 156; excessive speed in fog, 36; obstruction of ship by line, 456; tow and crossing steamer, 116; tugs and town meeting, 499; vessel breaking from moorings, 36.

Commerce, exclusion of benefit society from state, 436; findings of commissions, 499; intoxicating liquors, 75; license for sale of trading stamps, 176; rules governing, 316; sales in original packages, 75; selling liquor on excursion steamer, 295; state regulation of telegraph, 415; state taxation of vessels engaged in interstate commerce, 356; street paving, 216.

Compromise and Settlement, power of county commissioner, 156; validity, 58, 336.

Conspiracy, civil action, 436; combination to fix price of coal, 116; right of action, 176.

Constitutional Law, act regulating sale of liquor to minors, 415; arrest of seaman under treaty provisions, 116; cases involving federal question, 415; change in execution of death sentence, 17; change in judge's salary during term, 36; compulsory vaccination law, 75; construction of statutes, 476; corporation as a citizen of a state, 316; discrimination in taxing profession, 58; due process of law,

116, 156; eight hour statutes, 156; enactment of by-laws subsequent to contract, 415; equal protection of laws, 196; establishing boundaries between two parishes, 316; exemption of railroad from taxation, 156; express facto law, 415; highway supervisors, 196; illegal taxation, 17; impairment of contract, 75, 156; imprisonment for fines, 476; interpretation, 75; jury commissioner, 156; licensing itinerant merchants, 415; limitation of actions, 456; limiting the hours of labor, 216; maintenance of insane persons, 75; negro's civil rights, 58; notice to city of defective sidewalks, 58; obligation of contracts, 476; power of legislature to expand public moneys, 75; power of mayor to suspend police officer, 436; powers of state board of land commissioners, 36; practice of medicine without license, 36; publication of picture, 58; publication of white man as a negro, 196; railroad aid bonds, 476; regulation of inflammable materials, 196; reservation of power to change franchise conditions, 416; retroactive law, 156; retrospective ordinance affecting omitted property, 415; right of legislature to oust member, 356; sale of intoxicating liquors in private room, 196; service of process of foreign insurance company, 156; smoke ordinance, 456; state taxation of foreign corporations, 75; state's right to control fish, 476; statutes, 96; statute prohibiting hogs from running around, 196; statutes requiring cattle guards, 17; statute requiring conditional sales to be recorded, 396; street's railroad's immunity from paving streets, 476; submission of amendments, 176; sufficiency of popular vote amending state constitution, 58; taxation of street railway, 356; trading stamp legislation, 58, 456; validity of statute respecting damages by mobs, 426; validity of tax on special franchise, 416; vested rights, 58, 116, 377; wages, redeemable in merchandise, 336.

Contempt, appeal, 96; conflicting jurisdictions, 216; failure to pay receiver rent, 156; power of city recorder, 277.

Continuance, absence of parties, 196; enforcing continuance of trial after amendment, 316.

Contracts, administrator, 196; architect's certificate, 396; assignment of contract for support, 356; authority to make, 277; bankruptcy, 75; between corporations and controlling director, 436; burden of proving, 456; by-laws of benefit societies, 196; charge of architect for extra compensation, 356; charitable society, 156; conclusive effect of engineer's final acceptance, 499; consideration, 156; construction, 96, 256, 356; counsel's brief, 156; damages for delay in transportation, 176; drunkenness as grounds for avoidance, 316; estoppel, 196; evidence, 476; exemption of railroad from taxation, 336; failure to complete work in stipulated time, 356; failure to perform, 456; failure to specify time for completion, 436; foreman's right to raise wages of workman, 336; franchise as to privilege of removing house offal, 295; implied warranty, 277; incapacity to contract, 216; induced by fraud, 36; *in pari delicto*, 216; installation of heating apparatus, 75; knowledge of illegality, 236; material men, 196; misrepresentations inducing, 466; monopolies, 176; mutuality, 236; non-negotiable instruments, 500; pleadings, 277; public policy, 277, 456; ratification, 396; rescissions, 216, 396; restraint of trade, 316, 326; right to rely upon representations as to law, 356; time of performance, 236; to dismiss actions for alienating husband's affections, 58; trust deed, 316; variance by parol, 396; void as against public policy, 336; when construction a question for jury, 316.

Conversion, lapsed devise, 416.

Copyrights, cartoons, 58; exhibition of painting without notice of copyright, 58; laches, 196; photographs, 456; proof of damages, 196; sufficiency of notice, 256; use of copyrighted directory, 196.

Corporations, accommodation paper, 476; accounting by director, 336; acquisition of turnpike by county, 96; action against directors, 396; action against stockholders, 436; action by stockholders, 96; adopting contract of promoter, 277; application for receiver by minority stockholder, 216; assignability of underwriting agreement, 377; authority of secretary, 17, 256; basis of as- sessing license fee, 416; by-laws construed, 356; claim for labor before insolvency, 196; collateral attack, 216; compensation for directors, 396; construction, 377; creation, 356; defect of parties to action, 356; demand by mail for examination of books, 396; deposition at common law, 58; dividends on collateral, 336; effect of change in name on permit to do business, 476; enforcement of stockholder's intervening suit, 176; estoppel to deny incorporation, 436; exchange of property for stock, 17; failure and continuance of business president, 416; foreclosure of mortgage, 18; fraud on obtaining stock subscriptions, 58; fraudulent transfer of property, 196; innocent purchaser, 256; insolvency of foreign corporations, 196; interstate commerce, 316; license and franchise tax, 216; lien on stock, 356; misapplication of funds, 296; never to purchase its own stock, 436; notice to agent, 176; objection to recover, 336; personal liability of officer for mismanagement, 316; pleading, 316; powers of corporations, 356; powers of directors, 156; presumption as to right to contract, 396; purchase of corporate indebtedness, 236; purchase of goods by president at inadequate price, 196; rights of attaching creditors of foreign corporations, 378; rights of minority stockholders, 58; rights of pledges of stock, 58; rights of state to preference, 456; rights of stockholder to ask for receiver, 436; salary of president after sale of business, 296; sale of assets, 336; sale of franchise, 196; sale of stock, 277; sale of treasury stock, 36; seal importing authority of officers, 317; service of agent, 416; stockholder's liability, 75, 156; stock subscriptions, 156; suit against as partnership, 377; suit by stockholder, 256, 436; summary for breach, 336; ultra vires, 176, 436; unpaid subscriptions, 336, 476; unreasonable increase in officer's salary, 378; unreasonable salaries, 197; validity of debts, 277; validity of Texas anti-trust law, 75; voluntary service of stockholder, 176; wife's right to the transfer of stock, 236.

Costs, appeal taken for delay, 216; "double costs," 75; failure to give security, 296; modification, 356; set-off and counter claim, 96; supreme courts, 36; unnecessarily voluminous record, 96; where defendant is sued in wrong county, 216.

Counties, attorney's fees, 436; burden of proof, 216; contract by county officer, 436; enjoining letting of contract to build court house, 500; liability for publication of delinquent tax list, 476; power of commissioners' court, 75.

Courts, conflicting jurisdictions, 216; constitutional question, 156; duty to dismiss action, 317; foreign statutes, 58; joint and several liability, 256; jurisdiction of city court in equitable proceedings, 277; jurisdictional amounts, 156, 197; probate, 197; state board of qualification, 256; suit by foreign state, 216; summary judgment in city court, 336; vacating orders, 236.

Covenants, action for breach, 336; construction of "grant bargain and sell," 157; constructive eviction, 157; covenant of warranty, 216; devisees of land, 58; eviction, 176; peaceable possession, 176; pleading, 36, 236; unassigned dower lands, 157.

Creditor's Suit, necessity of acquiring lien, 436.

Criminal Evidence, admissibility, 277; admissions, 116; confessions, 357; comparison of handwriting, 18; credibility, 477; cross-examination, 378; declarations of co-conspirators, 397, 416; ex parte statements, 436; failure to establish the venue, 477; family record as to age of child, 116; forgery, 96; general questions, 196; handwriting expert, 397; impeachment of witness, 38; letters, 197; letters asking doctor to testify in rape case, 477; letters of husband and wife, 176; materiality of false testimony, 157; murder, 75; perjury, 157; procuring false testimony, 317; rape, 477; *res gestae*, 157, 197; statements of conspirators as *res gestae*, 477; testimony given at former trial, 336.

Criminal Law, burglaries entry into occupied rooms, 96; certificate of justice, 397; diligence in obtaining evidence, 96; erroneous exclusion of question afterwards, 96; error by state, 296; forging school warrants, 157; former acquittal, 416; insanity after affir-

mation on appeal 96; insanity as a defense 456, 477; irregularity in organization of grand jury, 336; judicial notice, 278; laches in bringing up appeal, 96; lapse of sentence to escaped prisoner, 456; modification of excessive sentence, 75; previous conviction for unlawful sale of intoxicating liquors, 75; new trial, 96; receiving stolen goods, 75; review of evidence to sustain conviction, 116; to open and close argument, 296; sentence in alternative, 477; sufficiency of evidence in murder case 256.

Criminal Trial, accomplice as a witness to state, 76; accomplice's testimony, 176; appeal on judgment roll, 18; argument commenting on accused's wife's failure to testify, 378; attempt to commit abortion, 76; bill of exceptions, 18; burden of proving former jeopardy, 236; burglary, 96; certificate of case made, 36; certiorari to city court, 477; commenting on credibility of ex-convict's testimony, 18; comments on defendant's failure to testify, 177; comments on evidence submitted, 477; comparison of hand writing, 96; confessions, 76, 177; continuance, 416; cross-examination, 97, 216; debating admissibility of a confession before jury, 296; declarations, 296, 397; defendant as a witness, 477; delivering instructions in absence of accused, 177; discharge on insufficiency of proof, 216; dismissing appeal, 197; examination of witness, 416; excessive verdict, 416; forgery, 157; former acquittal, 236; former conviction, 477; former jeopardy, 296; harmless error, 138; impeachment of witness, 397; improper argument, 337; incapacity of counsel, 36; indeterminate question, 357; indictment, 197; information and complaint, 197; instructions, 197, 256; intent as an element in embezzlement, 416; judge communicating with jury, 397; jurisdiction, 197, 337; jury and judge of facts proved, 76; larceny, 337; leading questions, 236; misconduct of jurors, 236; mistrial as constituting former jeopardy, 177; motion in arrest of judgment, 116; newly discovered evidence, 477; objections to evidence, 278; plea of not guilty, 337; premeditation in homicide case, 317; presumption as to application for continuance, 436; proving reputation, 237; questions to jury voir dire, 197; reading portions of testimony, 18; reasonable doubt, 296; reopening case, 296; right to speedy trial, 257; separation of jury, 97, 357; setting aside conviction, 36; severance 197, 317; shorthand of absent witness, 177; statements of accused, 116; swearing jury, 18; testimony as to prior theft, 97; transfer to county court, 36; unlawful sale of liquor, 257, 357; venue, 296; weight of evidence, 36; withdrawal of plea to file demurral, 37.

Crops, right to growing crops, 237.

Courtesy, agreement to relinquish, 456.

Customs Duties, *nolle prosequi*, 58.

Customs and Usages, degree of proof, 278; evidence, 357.

Damages, abbreviations, "etc." 296; agreement as to damages, 177; alleging permanency of injuries, 317; breach of agreement for sale of patented article, 237; breach of contract, 357; cancellation of building contract, 18; defective doors, 58; detaining property, 197; duty to prove value of medical services, 216; evidence, 237; excessive verdict, 357; fright as an element, 97; impairment of wife's power to labor, 58; injuries to passenger, 18, 177; instructions, 97, 257; loss of child bearing power, 18; loss of shipment, 317; medical testimony, 477; mental pain and bodily suffering, 157; pain and mental anguish, 436; personal injuries, 37; physician's evidence, 456; pleading, 237, 278; proof where specific injuries are pleaded, 37; prospective profits, 456; punitive damages, 117; tort, 436; values of animals killed by railroad, 37; vexatious contest by Life Insurance Company, 397; where speculative and remote, 397.

Dead Bodies, interest of widow, 357.

Death, action by father for wrong death, 296; evidence of earning capacity, 337; health department certificates, 97; limitations as affecting dower, 58; measure of damages, 500; money value for wife's earning capacity, 237; right of action by minor married daughter, 177; what constitutes legal residencies, 237.

Dedication, damages for land taken for street,

157; ratification, 97; repudiation, 138; revocation before acceptance, 58; what constitutes, 237.

Deeds, ability to understand words used, 18; acknowledgment, 317; character of conveyance, 456; conditions subsequent, 37; consideration, 477; construction as to inconsistent parts, 416; conveyance from mother to son, 357; conveyance of trust, 278; delivery, 97, 257, 357, 397; evidence as to sanity of grantor, 117; executed gifts, 157; habendum to explain granting clause 477; incapacity of grantor, 216; power of sale, 76; reservations, 500; rule in Shelley's case, 197, 416; secret intention, 357; title conveyed, 456; undue influence, 76; validity of delivery, 58;

Depositories, county unlawfully depositing with bank, 296.

Depositions, admissibility, 37; failure of party giving notice to appear, 397; interrogatories, 397; limiting number of witnesses, 456; oral cross-examination, 97; perpetuation of testimony, 416.

Descent and Distribution, agreement made under mistake of law, 278; consent division of estate, 76; donations inter vivos, 97; fraud in purchase of property, 138; liability of distributees for contingent claim, 37; partition, 139; property subject to lien for purchase price, 59; wife's property 317.

Discovery, physical examination in suit to annul marriage, 237; production of document, 456; special interrogatories to agent, 317.

Dismissal and Nonsuit, alimony pending appeal, 18; discretion of trial court, 139; dismissing as to certain parties, 317; power of trial court, 357; want of prosecution, 157.

Disorderly House, elements of the offense 157; letting building for unlawful purposes, 18; ownership, 157.

District and Prosecuting Attorneys, appeal from fiscal court, 216; *de facto* officer, 317, 416.

Divorce, alimony, 157, 257, 317; alimony as affected by remarriage, 59; alimony in separation from bed and board, 97; condonation, 197, 397; custody of children, 456; division of property, 397; evidence when not contradicted, 296; failure to issue execution for alimony, 257; foreign decree, 357; grounds, 37; interlocutory and final decree, 18; pedantry constituting cruel treatment, 237; pendency of action for separate maintenance, 357, 416; right to visit children, 97; separation from bed and board, 76; service of summons, 76; temporary alimony, 278; violence and threats, 456.

Domicile, of wife, 197; of infant after father's death, 177; suit for separate maintenance, 477; temporary absence, 317, 378.

Dower, as affected by concealment of marriage 50; assignment, 37, 397; lands held in trust, 337; relinquishment, 18; right of heir's widow, 197.

Drains, petition for assessment, 237.

Druggists, civil liability for sale of poisons, 37; refusal to deliver prescription, 477.

Easements, action to enjoin interferences, 278; duty to properly insulate wires, 37; highways, 237; parties, 37; reservation, 76; right to change tramway to steam railway, 37; temporary change as constituting adverse user, 37; use of way, 37; way of necessity, 37.

Ejectment, description in deed, 197; evidence as to title, 477; limitation, 216; pleadings, 237; property purchased at execution sale, 197; purchaser *pendente lite*, 456; temporary absence, 378; title to maintain, 416; way of necessity, 456.

Elections, ballot, 397; canvassing board, 416; defective marking on ballots, 217; effect of vote cast after closing poll, 76; harmless error, 177; injunction, 197.

Electricity, injury by live wire, 296; injury to lineman, 278; negligent turning on, 456; regulation and contract, 117; right to infer negligence, 337.

Embezzlement, appropriating state funds, 197; arrangements with prosecutor, 416; check as evidence of money appropriated, 177; demand and return of the money 117; evidence, 337; issues of proof, 97; private banker's misuse of funds, 257.

Eminent Domain, action for damages for burning grass, 337; additional servitude, 177; claim for damages and its priority over mortgage, 237; compensation, 436; condemnation for public use, 357; damages, 477;

damages by railroad embankment, 500; damages for widening street, 157; erection of electric poles and wires, 357; establishment of highways, 317; expropriation proceedings, 117; jurisdiction of federal courts, 278; jurisdiction of supreme court, 97; land belonging to state, 18; landlord and tenant, 296; market value, 296; mineral and oil lands, 197; occupation of street by railroad, 117; partial destruction of building, 237; petition for establishment of highway, 237; private way, 278; railroads, 278; railroad depot as a benefit, 436; right appurtenant to be considered, 477; right of foreign railroad corporation, 117; right to exercise power, 397; streets, 217; surface water, 257; telegraph company's locating line, 257; uncertainty in record of condemnation, 97; waiver, 197.

Equity, adequacy of remedy at law, 216; affirmative relief, 397; continuing nuisance, 76; culpable laches, 59; decree of pro confesso, 217; diverse citizenship, 257; exceptions to report to commissioner, 18; jurisdiction, 177; laches, 97; multifariousness, 317; necessary parties, 157; oral examination of foreign witness, 500; rehearing case, 76; setting aside judgment, 97; sworn answer, 337; test of jurisdiction, 237; unconscionable enforcement of debt, 416.

Escape, payment of fine, 76.

Escheat, will, 197.

Estoppel, acceptance of goods, 296; acts creating, 317; agreement not to engage in similar business, 76; ancient deed, 397; attachment, 97; construction of contract, 217; depositor may resist collection of note by bank's assignee, 198; easements, 37; evidence contrary to oath previously made, 278; interest on mortgage, 117; miner's lien, 456; mortgage, 317; non-delivery by carrier, 76; oral admissibility as to title, 18; ownership of property, 378; railroad right of way, 357; silence, 198; specific performance, 477; subrogation, 416; subsequent title, 18; suit to quiet title, 296; title to land, 177; void tax sale, 237; where one or two of parties must lose, 357.

Evidence, action to enjoin encroachment on street, 157; admissions of negligence by agent, 76; ascertaining conveyance, 18; assumption of risk, 217, 337; best and secondary evidence, 397; books and papers, 298; books of original entry, 76; boundaries, 296; burden of showing improper charge against estate, 237; carbon copy of letter, 437; competency of witness as to value, 500; conclusions of witness, 257; condition governing indorsement of check, 117; consideration different from that expressed in writing, 416; construction of deed, 177; contract for shipment of live stock, 177; conveyance by corporations, 278; credibility of witnesses, 457; declaration of agent, 278; declaration of deceased, 198; delay in shipment of live stock, 296; dictated letter, 198; distance required to stop train, 177; dying declarations, 198; earnings of railroad for taxation purposes, 437; existence of quarantine, 337; expert medical testimony, 477; expression of pain, 177; failure insurance company, 157; foreign judgments, to call witness, 59; fire agent's liability to 500; gaming, 357; goods obtained by fraud, 317; grant from sale, 337; husband and wife after divorce, 37; hypothetical questions, 97; identification of letter, 257; indorsement of note, 217; influence on bidders at judicial sale, 18; insolvency, 97; law of foreign state, 278; market papers to establish value, 257; measure of damages in personal injury case, 59; memorandum book, 177; memorandum in action for work done, 97; meteorological records, 257; negligence in riding on running board, 477; negligent railroad fires, 500; newspaper report as to market price of stock, 337; opinion as to hand-writing, 217; opinion as to sanity, 117; opinion as to value, 296; opinion evidence, 416; ownership of railroad, 37; presumption as to solvency of indorser, 97; presumption from failure to call witness, 97; production of books, 337; proving by parol the contract and carriage, 457; record of deed, 437; refreshing memory from records, 37; relevance of testimony, 198; representations of mortgagor, 357; res gestae, 397; sale of land, 177; secondary evidence as to execution of bond, 237; stenographer's minutes, 337; suicide, 257, 296; telegrams, 18; testamentary capacity, 416; testifying from records, 237; unauthenticated letters, 317; unauthenticated summons, 37; validity of services under foreign statutes, 337; value of damaged freight, 471; varying written contract by parol, 117; will contest, 337; written contract, 437.

Exceptions, Bill of, time for filing, 437.

Exchange of Property, evidence as to terms of agreement, 416; fraudulent misrepresentation 157.

Execution, claim of third person, 278; contempt, 397; description of property levied on, 317; foreign judgments, 457; levy where title is held in name of another, 457; motion to set aside, 477; property subject to ancestor's debts, 157; sale of corporation stock, 237; sheriff's deed, 117; suit to set aside sale, 37; teacher's salary, 296; title acquired at sale, 97; trover and conversion, 257; writ of possession, 397.

Executors and Administrators, accounting and notice of appeal, 357; accounting of executor, 457; administrator's purchasing at sale of real estate, 217; ancillary administration, 217; attorney's fees, 337; bonds, 317; claims, 477; claim for attendance and services, 417; classification of mortgages, 18; closing successions, 117; collateral attack on sale of land, 139; compensation, 237; construction of will, 18; conversion by administrator, 177; crops set aside as widow's allowance, 278; debts due from heir, 257; deed to third party, 457; descent, 198; devolution of rents accrued of lessor's death, 37; enforcement of contracts, 117; erroneous appointment, 397; failure to account, 177; failure to file contingent fee, 37; fees of administrator, 97; filing claims, 177; fraud in purchase, 97; homestead, 198; interest on funds of estate, 378; joining temporary administrator in ejectment suit, 117; laches in filing claim, 217; liability of land for debts, 477; misapplication of assets, 437; necessity of suing to recover personal property, 296; no bar against claim after presentment, 198; nomination by next of kin, 177; non-residence, 437; partnership accounting, 177; payment of claims, 237; payment of legacies, 357; presumptions as to appointment, 478; purchase of land, 238; recovery assets, 98; remedies on bond, 177; requisites to title under administrator's bond, 76; right of administrator to sue, 296; rights of legatee, 238; rights of purchaser of heir's interest, 117; sale of real estate, 178, 357, 478; sale to pay debts, 238; savings bank deposits, 478; separation agreement by husband and wife, 59; special allowance, 478; specific performance, 457; subrogation as to wife paying mortgage debt, 417; what is a judicial sale, 317.

Exemptions, citizenship of nominal payee as affecting action on note, 437.

Extradition, identity of prisoner, 178; right to a hearing, 18; validity of commitment, 257; what constitutes being charged with crime, 217.

Factors, consignor's right to repudiate shipment of grain, 59.

False Imprisonment, evidence as to cruelty, 417.

False Pretenses, corporation partnership, 198; procuring money, 217; unlawful purpose, 198.

Federal Courts, ancillary jurisdiction, 357; conflict of jurisdiction, 278; co-ordinate jurisdiction, 37; creditor's suits, 117; diverse citizenship, 257; diversity of citizenship, 76; due process of law 358; enjoining enforcement, 457; federal and nunc pro tunc question, 257; final judgment, 358; jurisdictions, 157, 378, 417, 478; questions, how raised and decided, 217; rights of persons beneficially interested in judgment, 38; state decisions, 59; rights of persons beneficially interested in judgment, 38.

Ferriles, interference with franchise, 378.

Fire Insurance, action against foreign corporation, 217; adjustment, 397; arbitration, 198; assignment, 178; authority of agent to waive provision, 417; cancellation of policy, 117; competency of appraisers, 278; excessive valuation, 117; false swearing, 478; general agents of non-resident company, 378; iron safe clause, 217; liability of agent, 76; liability of insured for assessment, 397; limitation of agent's authority, 38; ownership of property, 457; place of exhibiting books of account, 358; proofs of loss, 19, 198; rates, 157; right of action, 257; state-

ment of plaintiff's claim, 358; unauthorized companies, 457; valued policy law, 437; waiver of proofs of loss, 217; waiver of provision respecting title, 117; warrants, 337.

Fires, negligent setting out, 437.

Fish, fishing rights under treaty with Indians, 358; police regulation, 76; state's right to control, 478.

Fixtures, articles pertaining to a theater, 238; commercial finishing material, 296; equitable interferences, 297; improvements, 478; landlord and tenant, 417; machinery, 19; replevin, 76; right to remove building, 178; verbal sale of land, 297.

Forcible Entry and Detainer, action to recover possession, 500.

Forgery, fraudulent intent, 457; school warrants, 98; sufficiency of indictment, 98; variance in indictment, 139.

Fraud, corporate bonds, 478; damages, 198; evidence of similar representations, 76; knowledge, 437; misrepresentations as to price paid for property, 358; representations as to quantity of land, 217; responsibility for acts of furtherance of conspiracy, 59; sale of land by acreage, 297; stock subscription, 358.

Frauds. Statute of agreement as to crop, 178; agreement for lien on lands, 457; agreement to answer for debt of another, 297; bankruptcy, 437; boundaries, 257; contract employing agent to purchase land, 417; executory contract, 500; forcible entry and detainer, 337; *lex loci contractus*, 178; memorandum signed by auctioneer, 59; oral agreements affecting boundary, 217; oral agreement that marriage should cancel debt, 456; oral contract involving real estate, 297; order for goods, 278; parol promise to pay debt of another, 238; partnership agreement, 198; recovery of quantum meruit, 257; sale of growing grass, 117; servitude on real estate, 358; unenforceable agreement to convey lands, 98.

Fraudulent Conveyances, burden of proof, 19; conveyance to one for the benefit of another, 297; disclaimer, 478; evidence, 98, 437; husband and wife, 158, 437; inadequacy of consideration, 178; lesion beyond molety, 317; purchasers with notice, 178; remedies of creditors, 38; rights of partnership creditors, 117; subsequent creditors, 38; want of consideration, 358; where prisoner is held under void process, 297.

Gaming, evidence, 98; interstate commerce, 278; letting premises for gaming, 478; option dealing in grain, 358; paying by mistake, 417; playing pool, 117; pool room a gaming house, 257; procuring money by fraud, 38; repeal by statute, 417; speculation in futures, 398; undisclosed intention of one party, 117.

Garnishment, duty to garnishee to give notice to principal debtor, 358; evidence of indebtedness, 278; findings, 178; pledged stock, 317; garnishment, trustee process, 257.

Gas, negligent explosion of house, 318; right to bury pipe line in public highway, 258.

Gifts, essential elements, 437; inumbered property, 98; indorsement securities, 198; savings bank account, 178; sufficiency where real estate is involved, 59; undue influence, 258, 478.

Grand Jury, appointing substitute for state attorney, 318; challenges, 178; increasing number of panel, 217; minutes of grand jury, 398; selection, 158; special term, 98.

Guaranty, construction, 337; discharge of guarantors, 457; liability of guarantor, 238; mortgage to secure, 59; 417; principal and agent, 417.

Guardian and Ward, action on guardian's bond, 258, 398; effect of ward's death, 38; final settlement, 437; increased value of ward's property, 198; investment of ward's funds, 478; natural guardianship, 398; purchase by guardian on credit, 117; qualifications of guardian, 77; sale of land, 478; specific performance of contract made by guardian, 417.

Habeas Corpus, Chinese exclusion cases, 358; commitment by legislative committee, 500; commitment under civil process, 500; effect of reversal of order, 217; extradition, 19; illegal restraint, 178; irregularities, 398; judgment *nunc pro tunc*, 38; power of federal court, 38; remedy where convicted under void statute, 158; where commitment was for contempt, 238.

Hawkers and Peddlers, city license, 77; sale by farmers, 19.

Health, county superintendent, 297; right to collect house ofal, 297.

Highways, adverse user, 98; automobile, 478; care required, 318, 417; duty of town, 417; law of the road, 297; nature of grant, 238; prescription, 198; purchaser of land without notice, 457; rights of abutting owners, 98; right of re-entry on discontinuance of road, 417; right to quarry under, 59; subject to jurisdiction of county courts, 297; viewer's report, 318.

Homestead, adultery as a mitigating circumstance, 38; conveyance by husband, 238, 318; conveyances of right of way to railroad, 118; effect of wife's failure to join in mortgage, 59; establishment, 417; how created and lost, 417; mortgage, 98; nature of estate, 298; parol conveyance by husband and wife, 258; rights of creditors, 217, 457; self-defense, 98; undivided interests in land, 417; validity of deed of trust, 98; value exempt, 98; what constitutes, 178; wife's ignorance in conveying, 279.

Homicide, absence of blood stains, 437; accidental shooting, 59, 98; assault in sudden passion, 318; assault with intent to murder, 38; burden of proving beyond a reasonable doubt, 337; capital punishment, 258; degrees, 77, 178; evidence, 198, 297, 437; insanity, 198; instruction, 19, 318; instructions as to justifiable manslaughter, 38; instructions as to self-defense, 98; involuntary manslaughter, 238; killing in perpetration of robbery, 98; love letter as evidence, 217; manslaughter, 178; provocation, 378; provoking quarrel, 437, 457; self-defense, 59, 178, 417.

Hospitals, liability of railroad for negligence of its physicians, 437.

Husband and Wife, action to set aside deed to wife, 338; bank account in joint names, 77; chose of action, 378; community property, 318; contract as to property rights, 417; conveyance between, 238; conveyance through medium of third party, 218; deed by wife, 457; equitable separate estate, 98; estoppel, 238; 358; homestead, 218, 258; jurisdictional amount on appeal, 118; life insurance policy, 258; obligation of husband, 218; partnership, 297; property purchased with wife's money, 279; right of wife to sue for libel, 318; right to custody of wife, 457; suit for separate maintenance, 478; suit without joining husband, 398; suitable residence, 457; suretyship of wife, 478; tenancy in entirety, 59; torts of wife, 417; wife as agent, 297; wife's lien on property of husband, 38; wife's separate action for damages, 19.

Improvements, notice of superior title, 19.

Incest, uncorroborated testimony, 297.

Indemnity, construction of bond, 118; defective elevator, 98.

Indians, accounting by guardian, 38; public lands, 158.

Indictment and Information, affidavit, 98; amendment, 38; different assignments, 158; forgery, 98; indictment, 297; order by attorney general to prosecute criminal proceedings, 38; separate offenses, 118; verification, 178; wife as witness before grand jury, 77.

Infants, articles purchased to carry on business, 297; avoidance of contract by adult, 38; investment of minor's funds, 417; lien of attorney, 218; petition for appointment of guardian, 478; repudiation of contract, 297; right of chancery to order sale of land, 457.

Injunction, adequate remedy at law, 59, 77, 158; burden of proof, 98; contempt, 358; contest over public lands, 398; cutting railroad ties on swamp lands, 98; ejectment, 338; enforcement, 59, 218; enjoining enforcement, 478; equity's lack of jurisdiction, 218; expropriation proceedings, 478; irreparable injury, 19; maintenance of railway station, 417; pleading, 158; police interference with business, 457; reclamation district in California, 118; restraining legislative action of municipal body, 118; sale of corporation's stock, 318; submission to arbitration, 297; to prevent disclosure, 198; village marshal, 77.

Innkeepers custody of baggage, 158; guests, what constitutes, 478.

Insane Persons, appointment of next friend, 478; family meeting, 378; liability for support of

wife, 218; revocable gift revoked by guardian, 59.

Interest, contractor's claim for extras, 77; damages, 238; reforming incorrect amount of judgment, 279; where money received through fraud, 77.

Internal Revenue, legacy tax, 378.

Interpleader, garnishment, 178.

Intoxicating Liquors, action to abate liquor nuisance, 258; authority of police jury, 378; dealer's bond, 218; dwelling house, 318; illegal sale, 178; indictment, 178; Interstate shipment C. O. D., 297; keeping liquor with intent to sell, 338; liability on bond, 457; local option, 38, 158, 198, 238; mulct tax, 297; music rooms, 59; place of sale, 178, 378; revocation of license, 238; sale to minor, 178; statutory bond, 158; typewritten signature to remonstrance, 118; unreasonable requirements as to petition for license, 178; violation of local option law, 38; violation of ordinance, 478; what constitutes sale in county, 98.

Joint Adventures, breach of contract, 77.

Joint Stock Companies, rights of stockholders, 38.

Judges, brief absence of judge during criminal trial, 297; civil liability for judicial acts, 158; grand jury organized by *de facto* judge, 318.

Judgment, action on foreign judgment, 158; assignment, 437; bar of ejectment, 398; breach of covenant against incumbrances, 59; charitable corporations, 178; clerical error, 238; correction after term, 279; creditor's suit to set aside fraudulent transfer, 417; effect of stay of execution on lien, 398; effect on attachment, 158; impeachment of foreign justice, 478; injunction against enforcement, 198; invalid foreclosure, 38; irregularities preceding judgment, 38; issues determined, 59; joint action, 158; joint defendants, 417; joint tortfeasors, 218; jurisdiction to enter judgment, 338; mortgages, 178, 218; motion to set aside, 297; motion to strike out, 338; motion to vacate by stranger to action, 77; motion to vacate for irregularities, 398; *nunc pro tunc*, 238; parties bound, 178; plea of res judicata, 258; pleadings, 418; power of court, 19; presumption as to jurisdiction, 77; prior liens, 198; proof of foreign judgment, 457; purchase by attorney, 378; questions not determined, 218; remittitur, 238; *rex judicata*, 38, 77, 118, 139, 238, 297, 318, 398, 438, 478; restraining collection, 378; revival, 77, 258; scire facias to revive default, 438; separate maintenance, 358; setting aside, 38, 338; suit to set aside, 238, 500; vacating judgment after term, 358; validity of foreign statute, 338; validity where service was void on one defendant, 338.

Judicial Sales, notice as to retention of surplus wrongfully withheld, 338; prejudice, 139; ratification of defective sale, 297; statements of title, 378.

Jury, challenges, 98, 297; familiarity of deceased's relative with jury, 118; legality of panel, 318; religious faith, 418; waiver of right to jury, 298, 318.

Justices of the Peace, action to set aside judgment, 217; appeal bond, 458; decision as against the weight of evidence, 77; failure of plaintiff to appear, 199; garnishment, 118; granting non-suit after judgment, 77; judicial acts, 258; jurisdiction, 39; plea of jurisdiction, 77; right to appeal, 59; splitting up demand into jurisdictional amounts, 19.

Kidnapping, what constitutes, 218.

Landlord and Tenant, account stated, 458; adequacy of legal remedy, 218; agreement to repair, 118; assent to assignment of lease, 238; assignment of lease, 438; breach of contract to accept lease, 158; breach of covenant to pay taxes, 358; caveat emptor, 298; construction of lease, 19, 238; contract respecting operation of farm, 298; covenants to repair, 218; damages for breach of covenant to repair, 358; dangerous premises, 479; defective premises, 298, 458; delivery of possession, 39; destruction of building, 139; disclaiming title of lessor, 59; distress warrant, 77; division of crops, 438; duty to record leasehold, 59; effect of option to renew lease, 238; enticement of tenant, 318; eviction, 139, 438; failure to furnish surety for renewal of lease, 318; failure to repair, 218; forcible entry and detainer, 398; holding over after expiration of lease, 418; in-

jury to tenant's property, 298; lease, 298; lease and repossession by lessor, 238; lease for agricultural purposes, 418; lease of building for saloon, 158; lease signed by landlord alone, 318; liability for injury to third person, 19; liability for rent, 158; liability of landlord to tenant, 198; lien on crops, 118; non-payment of rent, 258; obligations of heirs and assignees, 238; overflowing faucet, 338; payment of rents as alimony, 398; possession, 199, 398; rent not due at commencement of suit, 19; right of lessee, 19; sale of portion of leased premises, 418; tenant holding over, 418; tenant's negligence as affecting fire insurance, 39; uninhabitable premises, 238; what constitutes surrender of lease, 77; wrongful ejectment, 298.

Larceny, circumstantial evidence, 158; property subject, 479; sufficiency of evidence 158; what constitutes, 139.

Levees, improper construction, 60.

Lewdness, acknowledgment of concubinage, 378.

Libel and Slander, actionable words, 338; charge of dishonesty, 418; damages, 318; elements of damage, 298; imputation of dishonesty in trade, 438; legal directories, 358; liberty of the press, 77; matter libelous per se, 218; mistake, 398; newspaper articles, 178; privileged communications, 438; words imputing crime, 39.

Licenses, city ordinance, 118; intoxicating liquors, 338; state statutes, 418; timber privileges, 178; validity of ordinance, 378; vested rights, 238.

Liens, equitable mortgage, 438; foreclosure of mortgage, 338; personal liability of vendee of land, 279.

Life Estates, improvements, 179; adverse possession, 199.

Life Insurance, application, 318; assignment of policy, 398; compelling payment of premium note, 118; consideration from services, 199; consideration for settlement for claim, 139; contract 199, 298; death pending default, 98; deduction of unpaid premiums, 158; effect of uncontested clause, 398; evidence as to suicide, 258; exemption from liability for debts, 358; grace for payment of premium, 118; instruction as to whom policy was issued, 458; place of contract, 378; presumption that foreign complied with law, 139; proofs of death, 77; refusal to accept premiums, 479; right to paid up policy, 218; right to participate in reserve fund, 418; untrue answers in application, 338; value of assessment policy at time of forfeiture, 238.

Limitation of Actions, absence from state, 398; action in ejectment by heirs, 118; amended petition, 98; burden of showing foreign statute, 398; debt against unadministered estate, 39; discovery of payment by mistake, 139; indorser's liability after removal of bar, 418; new promise, 19, 438; non-payment of mortgage, 258; part payment, 179; payment by mistake, 139; pleadings, 179; relationship of parties, 179; repudiation of trust, 318; reservation of lien, 418; title through deed of non compus, 118.

Lists Pendens, delay in prosecuting suit, 438; notice, 398; persons concluded by judgment, 19; purchaser at tax sale, 60; title to crops on foreclosure, 318; vacation of judgment, 438.

Logs and Logging, compensation for use of room, 39; contract for sale of timber, 179; failure to fence gang plank, 98; parol sale of standing timber, 218; uncertainty in contract for sale of timber, 279.

Lost Instruments, establishing title by circumstantial evidence, 279; presumption as to place of payment, 479.

Lotteries, instruction, 438; police power, 77; slot machines, 479.

Malicious Prosecution, acting under advice of counsel, 458; instructions, 418; probable cause, 19.

Mandamus, appropriation to pay interest on bonds, 479; building permit, 358; commission to take depositions, 378; court's discretion in deciding rule against stenographer, 60; directors of public works, 336; examination of corporation's books, 158; justice of the peace, 338; original jurisdiction of circuit federal court, 218; parties, 118; payment of salary, 118; refusal of magistrate to punish for contempt, 199; review of judicial action, 398; sufficiency of answer, 239; tax-

payer's action, 398; to cancel dentist's registration, 77; to compel construction of street, 398; to include vote, 77; to reinstate expelled members of legislature, 358; violation of injunction, 258.

Maritime Liens, demurrage 279.

Marriage action for annulment, 338; cohabitation 438; common law marriage, 258; impotency, 78; repute and cohabitation, 179.

Marshalling Assets and Securities, conveyance of fee, 418.

Master and Servant assumed risk, 39, 78, 118, 139, 179, 258, 298, 399; breach of contract for services, 298; complaint in personal injury case, 298; concurrent negligence, 179, 239, 418; contract for hiring, 19; contract of employment, 318, 479; contract releasing railroad from liability for negligence, 399; contract to give entire time, 218; contributory negligence, 60, 98, 139, 179, 218, 258, 279, 298, 318, 399, 438; dangerous appliances, 378; **LAW JOURNAL ELEVEN R DEC 28** dangerous premises, 60, 258; dangers of employment, 298; defective appliances, 19, 118, 218, 418; defective elevators, 179; defective machinery, 479; defective railroad track, 110; defective scaffolding, 99, 479; defective turntable, 218; discharge, 78; duration of relation, 458; duty of master toward safety of servant, 279; duty to discharge incompetent servant, 158; duty to inspect derrick, 78; duty to inspect staging, 378; duty to keep car-dep in repair, 399; duty to warn, 78; employee's liability act, 218; employment of single woman only, 399; engineer and other fellow servants, 158; evasion of fellow servant law, 39; exemplary damages, 438; failure to instruct, 338; failure to observe rules, 418; failure to warn servant of defects, 358; fellow servants, 118, 179, 298; 318, 358, 438, 479; gas and oil lease, 239; hospital benefits, 218; independent contractor, 218; injunction against distributing market quotations, 358; injury on freight elevators, 319; injury to minor, 118; injury to railroad brakemen, 179; injury to seaman, 239; injury to servant, 60, 239, 258, 319, 458; injury to stevedore, 19; injury to sub-contractor's servant, 378; injury to patron of amusement association, 78; letters as constituting written contract, 418; liability for tort of servant, 239, 299; liens, 500; master's duty to inspect street cars, 458; negligence of chauffeur, 199; negligence of superintendent, 179; negligence of vice principal, 378; operating cars too close to electric pole, 118; proper appliances, 199; protection against landslide, 458; railroad yard rules, 158; risk assumed must be known and apparent, 418; risk not assumed by child employee, 239; risk of injury by an uneven floor, 418; safe appliances, 379; safe place to work, 19, 179, 258, 358, 399, 438, 479; scope of employment in negligence action, 99; sufficiency of complaint, 219; sufficiency of instruction in personal injury case, 99; time checks, 239; tort of servant, 78, 319; train dispatcher a vice principal, 239; unanticipated dangers, 298; use of dynamite, 258; vice principals, 119; voluntary undertaking dangerous work, 379; volunteer, 399; wrongful death of brakeman, 379; wrongful discharge, 258, 338.

Mechanics' Lien, abandonment of contract, 298; change of ownership of property, 78; failure to strictly perform contract, 458; foreclosure, 19; lienable articles, 219; notice as to responsibility of owner, 199; parties, 319; property subject, 379; provisions in contract, 338; quitclaim deed, 26; subsequent delivery of materials, 438; waiver of lien, 199.

Militia, liability of municipal corporation, 479.

Mines and Minerals, attempt to locate prior valid grant, 20; conflicting claims, 39, 438; construction of lease, 179; estate in minerals, 199; execution of lease, 438; failure to pay stock assessment, 438; lode location, 20; oil lease construed, 219; rights of parties under respective leases, 319; royalties, 319; sale of interest in mining partnership, 298; sale of land, reserving ownership of oil and gas, 298; suit to quiet title, 19.

Mining Claim, discovery of vein, 179.

Money Received, defenses, 259; undue influence, 219.

Monopolies, charges for purchasing live stock, 199; combination to fix prices, 119; interstate commerce, 20; municipal ordinance, 298; pro-

hibition of trusts, 219.

Mortgages, action to redeem from liability on recognizance, 458; assignment, 479; assumption by owner of equity, 239; authority of agent, 359; bona fide purchaser, 179; bona fides of assignment, 60; conformity of judgment in an agreed case, 219; consideration, 458; counterclaim, 479; death of trustee, 298; debts secured, 219; deed absolute, 60, 139, 279, 359; defect in title, 99, 259; equitable liens, 338; extension of time for redemption, 359; foreclosure, 479; fraudulent alteration, 338; husband and wife, 479; incumbrance by husband, 99; irregularities in foreclosure sale, 179; mortgages as a bona fide purchaser, 239; motion to set aside judgment, 319; notice restoring possession, 259; parties essential to foreclosure sale, 39; power of sale, 78; priority, 199; release of surety on bond, 158; right of judgment creditor, 78; right to surplus from sale, 259; sale and reconveyance agreement, 119; sale under trust deed, 99; security deed, 219, 338; subsequent liens, 39; substituting trustee, 199; trespass to try title, 379; usury, 359; vacating foreclosure sale, 418; value of property mortgaged, 298; void foreclosure, 20; writ of assistance, 78.

Municipal Corporations, acquiring land by adverse possession, 20; action against for personal injuries, 379; action to recover taxes, 279; apportionment warrants, 399; assessing benefits of street improvements, 119; assessment for street improvement, 78, 219; bids, 199; bona fide purchasers of bonds, 500; care of pedestrian, 199; certiorari to review removal of police officer, 20; change of street grade, 500; city employee's interest in contract with city, 99; city warrants, 60; collateral attack on *de facto* corporation, 99; comparative negligence, 299; condemnation of existing sidewalk, 39; court's interference in city's business, 78; damages for change of street grade, 78; damages for overflow of surface waters, 259; defective sidewalks, 60, 179, 299, 379, 399; defective streets, 20, 158, 179, 299, 339, 418; destruction of shade trees by escape gas, 219; diverting use of public property, 39; duty to enclose reservoir, 179; duty toward trespasser on track, 439; election in incorporate certain territory, 60; encroachments on sidewalk, 319; excessive assessments for paving, 119; fireman's relief fund, 439; highways and title of abutting owner, 479; icy sidewalks, 78, 259; improvements bonds, 379; incorporations, 339; indebtedness, 78; injunction to prevent illegal use of city property, 418; injury to car employee, 219; injury to person on track, 78; interest on city indebtedness, 139; liability for defective sewers, 438; liability of city, 60; liability of city marshal, 78; liability on warrants, 259; lien for street improvements, 119; negligence of contractor, 259; negligence in obstructed street, 319; notice to abutting owner of street improvement, 119; obstructing street with a skid, 20; ordinance affecting nuisance, 479; ordinance affecting street improvements, 339; ordinance granting monopoly of removing house offal, 299; ordinance pertaining to wooden buildings, 119; power delegated by legislature, 379; power of investigating committee, 39; presumption that city officials perform their duty, 279; publication of sewer ordinance, 119; public improvements, 78, 158; railroad's damage to abutting property, 139; railroad's occupation of streets, 139; railway tracks on wharf, 239; reasonable care in maintaining sidewalks, 458; registration of automobiles, 199; regulation pertaining to storage of inflammable matter, 199; removal of city officers, 239; requiring billboards to be made of incombustible material, 199; revocation of license to use of street, 78; right of purchasers of municipal bonds, 458; right to leave team standing in street, 439; self-serving narration in municipal bonds, 139; special injury by abandonment of street, 500; State corporations as a citizen of the United States, 20; street improvements, 359, 458; street paving assessments, 379; taxation, 199, 339; taxing powers, 359; tax sale, 399; unsanitary conditions of prison, 319; use of streets, 199, 279; validity of bonds issued by *de facto* corporation, 458; violation of or-

dinances, 479; writ of vacation of assessment, 399.

Names, rule as to middle initial, 99.

Navigable Waters, line in tug's screw, 279; riparian rights to accretions, 339.

Negligence, articles falling from band stand on spectator, 78; burden of proving contributory negligence, 239; care required of children, 379; competency of oral testimony to prove, 439; consciousness of conduct, 199; controller box on electric car, 219; degree of care required of child using street, 319; doctrine of discovered peril, 458; evidence of other negligent acts, 359; fellow servants, 458; imputed negligence, 219; injury to child, 179; instructions as to preponderance of evidence, 139; instruction assuming a controverted fact, 399; insufficient allegations in petition, 139; limitations, 279; look and listen, 199; proximate cause, 78, 139; question for the jury, 158, 399; sounding of whistle, 399; standard of conduct of expert, 78; stevedore's negligence in failing to report, 158; violation of city ordinance, 479; when imputable, 239.

Newspaper, charge for election notices, 239.

New Trial, errors of instructions, 399; voluntary grant on account of erroneous instruction, 60.

Notice, sufficiency, 399.

Nuisance, abatement of public nuisance, 359; diseased animals, 458; private parks or gardens, 199.

Obscenity, corruption of morals of youth, 139.

Officers of the United States, liability for private property taken, 158.

Parent and Child, abandonment, 479; child's estate, 219; custody of child, 119, 199, 439; failure to support, 180; parent's right of action for negligence, 180; right to custody of infant, 219, 339.

Parties, amending to admit new parties, 359; condemnation proceedings, 60; defect, how raised, 479; deposits in court, 379; joining defendants in libel suit, 78; waiver of defect, 359.

Partition, attorney's fees, 399; bankruptcy, 439; judicial sale, 180; trespass to try title, 299.

Partnership, abandonment, 299; action for accounting and dissolution, 78; action against co-partners, 500; advances by one partner for another, 339; assets on dissolution, 458; authority of partner to lease premises, 219; charge for services, 439; claim against deceased partner, 339; duties of partners, 359; effects taken into custody by court of equity, 399; evidence as to existence of relations, 339; evidence as to the relation, 458; failure of petition to disclose plaintiff's name, 78; fraudulent agreement of one partner with creditors, 259; injury to alighting passenger, 299; novation of parties to contract, 159; part performance, 199; purchase of partner, 259; retirement of partner, 180; retiring partner's liability, 479; suit for an accounting, 39; surviving partner, 219; surviving partner's rights to administer, 20; termination, 379; what constitutes, 200, 339.

Patents, contributory infringement, 458; experimental use, 119; foreign sale, 239; infringements, 439; infringement and violation of injunction, 119; sufficiency of description, 458.

Paupers, residence and taxing, 259; statutes, 180.

Payment, application, 180; checks, 60; joint indebtedness, 359; mistake, 259, 299; negligence in presenting check, 439; rebates, 200; receipt "in full," 60; recovery of money paid by mistake, 139.

Perjury, construction of the word "false," 20; in procuring marriage license, 459; sufficiency of indictment, 140; what constitutes, 79.

Perpetuities, annuities, 200; conveyance to after born children, 439; devise in vestrymen of church, 180; duration of trust, 439; suspensory burns as evidence of malpractice, 219.

Physicians and Surgeons, care required in setting bone, 159; malpractice, 259; necessity of license, 239; qualifications, 200; X-ray burns as evidence of malpractice, 219.

Placing, action on accident insurance policy, 359; advancement, 399; admission of answer, 439; admission of demurrer, 439; amendment after trial, 399; confession and avoidance, 159; cross-complaint, 180; defects cured by verdict, 39; election between counts in petition, 439; inconsistent causus of action, 39; irrelevant matters, 299; money had and received, 79; petition, 378; plea of privilege, 140; questions of fact, 239; scope of demurser, 20; separating cause of action, 119; sufficiency of declaration, 479; supplemental answer, 239.

Pledges, advancements, 399; bona fide purchaser, 20; colorable sale of mortgaged property, 359; definiteness of debt, 259; delay in selling pledged property, 60; duty to realize on securities, 79; laches in instituting suit to set aside sale, 140; refusal to return, 480; setting aside sale by pledgee, 140; suit to set aside sale, 99.

Poisons, sale of, without proper label, 79.

Post Office, misuse of mail in scheme to defraud, 239.

Powers, duty to purchase from life tenant, 379. Principal and Agent, acts of agent, 339; accounting, 140; authority of agent, 359; authority of agent to alter contract, 219; authority to waive provisions of life policy, 279; burden of proving for commissions, 279; construction of power of attorney, 359; contract of employment on commission, 379; deceit in sale of corporate stock, 439; delegation of authority by agent, 119; duty to ascertain authority of agent, 359; existence of agency, 79; fire insurance companies, 159; necessity of recording a power of attorney, 20; notice of agent's fraud, 79; notice of revocation of agency, 480; power of attorney, 299; proof of agency, 459; proving title under lost deed, 279; purchase of usury, 39; ratification of agent's contract, 119; ratification of lease by acceptance of rent, 339; stockbrokers, 200; ultra vires, 480; unauthorized contract, 399; undisclosed principal, 459.

Principal and Surety, bond of cashier, 79; death of principal debtor, 339; discharge of surety, 219, 459; liability of bank president, 219; liability under contractor's bond, 339; release of surety, 299.

Private Roads, licensee, 20.

Process, exemptions from service of process, 480.

Prohibition, invalid municipal ordinance, 480; jurisdiction, 99.

Property, actual and constructive possession, 259; proving title under lost deed, 279; what law governs chattel interests, 39.

Public Lands, accretion, 60; application to purchase, 379; clerical error, 219; department decisions, 299; effect of occupancy, 359; equitable rights by virtue of treaty, 99; forcible entry and detainer, 39; homestead entry, 20; leases, 439; location of railroad, 280; pastures, 299; power of congress, 159; priority of grant, 280; railroad through State land, 140; review as to findings of court, 119; soldier's homestead, 60.

Quelling Title, community property, 339; indefiniteness of answer, 259; partial failure of title, 459; quo warranto, 39; right to use railroad track on land, 60; what constitutes, 239.

Quo Warranto, school districts, 180.

Railroads, abandonment of station, 459; abandonment of title, 459; backing engine, 200; brakeman ejecting passenger, 20; constructing roads over private ways, 79; construction of crossing, 79; construction of track, 239; contract to locate its shops and offices in Texas, 299; crossing accident, 159, 439; deed from abutting owner, 200; duty of engineer to look out for persons on track, 480; duty of rear brakeman, 180; duty to fence track, 299, 379; duty to look and listen, 79; duty toward trespasser, 119; effect of "M. C. B. defect card" on car, 379; eminent domain, 280; enforcement of municipal ordinance, 99; failure to give signal, 239, 379; franchise and charter right, 459; frightening horse, 399; indictment for failure to crossing signals, 39; injury due to obstructed view at crossing, 339; injury to animals on track, 219; injury to laborer sitting on track, 79; injury to pedestrians caused by defective walk, 219; injury to person on track, 39, 379; instruction as to negligent fires, 480; instruction in personal injury case, 99; killing cattle, 40, 399; liability for willful act of servant, 79; lien of mortgage, 119; materialmen's lien, 219; motives for sale of switch, 79; negligence where tracks are jointly used, 99; nuisance to adjacent property owner, 259; occupation of street, 99; ordinance regulating construction of crossing, 99; passing through a town, 200; person on track in freight yards, 239; proximate

cause of fire, 119; right of way, 200, 459; right to use street, 359; sparks from engine, 450; speed at crossing, 459; stop, look and listen rule, 259; sufficiency of declaration in personal injury case, 20; use of track by pedestrian, 459; wanton negligence causing death to trespasser, 180.

Rape, assault with intent, 99; issues, 280; sufficiency of information, 480.

Receivers, administration suit, 299; ancillary appointment, 259; answer under oath, 459; application for appointment, 280; counsel fees, 240; debts incurred by receiver, 439; fraud on procurement, 299; leave to sue, 159; personal expenses and attorney's fees, 339; powers, 279; right to sue outside of State, 339; wife's separate property, 459; wrongful procurement, 120.

References, exceptions, 79, 500; form of taking testimony, 500.

Reformation of Instruments, effect of title, 180; grounds, 259; mistake, 259 provision in lease as to improvements, 79.

Release, effect of pending litigation, 439; good faith as affecting validity, 459; obtainment of fraud, 180.

Religious Societies, deed to church warden and vestry, 280; jurisdiction of courts, 400; pastor not officer to bind, 79.

Remainders, contingent interest, 120; dower, 400.

Removal of Causes, diverse citizenship, 219; ejection, 79; fraudulent joinder of resident defendants, 379; jurisdiction of suit in rem, 380; local influence, 280; time for removal, 459.

Replevin, conditional bill of sale, 439; description of property, 459; estoppel, 140; right to sue, 99; suit without leave, 339.

Reversion, limitation as against married woman, 140.

Review, divorce, 380.

Rewards, payment of fund into court, 79; performance of service, 380.

Robbery, principals, 240; what constitutes dangerous weapons, 439.

Sales, acceptance, 339, 400; action against seller, 299; appropriation for State fair, 99; ballment, 380; bills of lading, 380; breach of contract, 439; breach of warranty, 79, 380; burden of proving fraud, 120; condition of goods at place of delivery, 339; conditions of option, 259; conditional sale, 259; consequential damages, 359; construction of contract, 120; conversion of timber, 280; damages for breach, 79; delivery, 79, 260; duty to inspect, 79, 339; executive contract, 180, 240; lex loci contractus, 120; material to be used in manufactured article, 20; measure of damages for breach, 240; mortgage of property conditionally sold, 80; offer to deliver a question for the jury, 159; offer and acceptance, 219; partial breach, 140; performance of condition, 459; purchase of stocks on margins, 200; quality of lumber sold in pile, 459; rescission, 120, 140, 380; stipulation for rescission, 459; time as a condition precedent, 380; waiver of right to rescind, 380; warranty, 200, 359, 380, 459; what law governs, 159.

School and School Districts, children of foster parents, 400; objection in certificate of tax levy, 459; paving streets, 359; powers in advisory board, 140; restraining sale of text books, 219; review of decision of officers, 459; statutory limit of indebtedness, 120; tax levy without notice, 240.

Seaman, injury in service, 159; lien for wages, 459.

Seduction, artifices, 80; letters showing previous lascivious condition of mind, 439.

Sequestration, amendment of bond, 200.

Set Off and Counter Claim, tax liens, 80.

Sheriffs and Constables, conversion, 180; destruction of attached property, 380; wrong levy, 320.

Shipping, carriage of gasoline automobile, 120; damage to cargo, 320; damage to crops, 320; dumping of cargo by barge, 159; health of passengers, 120; injury to scow while being towed in ice, 120; interrogatories in pleading, 340; negligence of stevedore, 80; negligence of vessel's physician, 80; negligent speed of vessel passing dock, 120; private or common carrier, 440; time allowed for loading, 240; torts of master and crew, 459; verbal transfer of vessel, 320.

Specific Performance, contract for the sale of land, 220; estoppel, 440; gifts of land, 280; jurisdiction, 80; mistake in contract, 459; oral option, 260; parol contract with persons since deceased, 180; referee, 200; sale of land, 300; sufficiency of tender, 400; title of vendor, 440; unconscionable contracts, 340; when denied, 359.

States, boundaries, 260; rules of legislatures, 359.

Statutes, amendment of charters, 500; construction, 120, 400, 480; establishment of State fair, 99; intoxicating liquors, 340; presumption as to regularity of enactment, 220; statement of case, 120; what constitutes, 260.

Stipulations, binding effect in court, 159.

Street Railroad, abbreviation used in tax assessment roll, 459; attempt to board moving car, 480; care required in carrying passengers, 280; care required in crossing defective tracks, 40; care required of motorman, 400; collision with automobile, 459; collision with buggy, 220; collision with pedestrian, 99; collision with team, 100, 459; collision with wagon, 340; conditions imposed in franchise, 180; contributory negligence, 80, 200, 320, 360; death to passenger, 340; degree of care required, 240; duty to look and listen, 440; explosion in controller box prima facie negligence, 360; failure to look and listen, 280; injury to bicycle rider, 440; injury to horse in street, 220; injury to infant trespasser, 380; injury to passenger, 360, 480; injury to pedestrian, 340, 400; killing horse, 80; motorman ejecting boy from running board, 140; pedestrian on track, 360; premature starting of car, 280; rights of bicyclist riding close to track, 400; rights of pedestrians, 40, 80; running into funeral procession, 380; special interrogatories, 360; use of tracks for team, 360.

Subrogation, administrators, 260; estate of deceased partner, 340; fidelity bonds, 40; homestead and dower, 140; necessary parties, 460; payments of void sale, 400; volunteer, 340.

Sunday, baseball games, 480; performance of labor, 140.

Taxation, assessment, 400; collateral inheritance tax, 480; confirmation of tax title, 300; delegation of power, 340; duty to assessor, 220; designation of separate pieces of property, 460; evidence in suit for collections, 100; failure to record tax deed, 220; forfeiture to State, 480; invalid assessment, 260; irregularities of affidavit in tax sale, 20; lessee of oil lease, 200; license taxation of commercial travelers, 20; minor's right to redeem on reaching majority, 140; non-resident trustee, 400; notice of application for tax deed, 300; notice of change in valuation, 140; notice of sale for taxes, 20; notice of sale for taxes, 20; notice to owner of tax sale, 80; over assessment, 159; payment of taxes, 400; payment of taxes as color of title, 280; period of redemption in tax sale, 220; provision as to other taxes in tax sale judgment, 159; redemption from tax sale, 159; regularity of assessment, 100; retrospective assessment, 300; review of assessments, 120; safety deposit vaults, 320; sale under invalid assessment, 400; service of tax suit, 200; stocks and bonds, 260; street railways, 360; succession tax, 220; suit to set aside tax deed, 500; tax deed, 260, 360, 400; tax sale, 20, 100, 180; tax sale and right to redeem after disability, 240; tax sale under defective publication, 80; tax title, 159; transfer tax, 400; validity of assessment, 159; validity of assessment notice, 340; void sale, 260; void tax deed, 340; voluntary payment by stranger, 80.

Telegraphs and Telephones, damages for wrongful removal of telephones, 20; delay in delivery, 80, 300; delay in message a question of negligence for jury, 100; error in transmission of message, 120; failure to deliver, 80; mental suffering as element of damage, 460; mutuality of contract, 240; selling right to operate telephone system, 380; third party's rights as to delayed message, 240; trespass to land, 260.

Tenancy in Common, action for rents collected, 440; adverse possession, 159, 200, 480; damage to property, 180; fraud in rendition of contract, 240; fraud in rendition of judgment, 240; married women, 159; sale of specific parcels, 159; trespass to try title, 300.

Tender, uncertified check, 340.

Torts, offer to repair, 80.
 Towage, negligence of tug, 159; negligence in loss of tow, 320.
 Trade Unions, breach of contract, 500.
 Trade Marks and Trade Names, descriptive name, 480; infringements, 320; limitation of label and dress of goods, 120; right of part purchaser to appropriate names of springs, 500; tobacco tax, 40; unfair competition, 260, 380; use of corporate name, 340.
 Treaties, rules for construction, 460.
 Trespass, cutting timber, 260; petitory and possessory action, 460; what constitutes, 280.
 Trespass to Try Title, evidence as to possession, 380.
 Trial, abandonment of homestead, 80; action for injuries to alighting passenger, 280; action by servant for injuries, 320; action to cancel deed for undue influence, 280; application to poll jury, 120; argument of counsel, 159; assault by employee on steamboat passenger, 80; assumption of risk, 360; conduct of court criticising a court, 100; counsel reading law to jury, 360; debauching female, 380; directed verdicts, 300; discretion in reopening case for further evidence, 220; effect of motion for verdict by both parties, 159; failure to object to photograph of letter, 220; failure to request more explicit instruction, 460; function of jury, 260; harmless error, 360; hearing at special terms, 160; impeaching witness, 240; improper argument, 140; inconsistent theories, 100; instructions, 80, 180, 285, 300; instructions against married women, 440; instruction in action for damages to shipment of cattle, 100; instructions in negligence case, 300; malpractice against physician, 260; misconduct of counsel, 440, 460; motion to direct, 260; polling jury as to special findings, 300; reading law to jury, 180; reading parts of depositions, 80; renewing objections to testimony, 240; reopening case after granting non-suit, 80; requiring jury to indicate findings, 380; request for instructions, 480; reopening case to admit new evidence, 40; scintilla of evidence rule in Pennsylvania, 380; self-defense, 300; special charges, 100; special interrogatories, 300; special verdict, 480; statements in argument of counsel, 100; stating the issues, 220; striking cause from calendar, 160; taking photograph into jury room, 440; trespass to try title, 250; verdict in foreclosure of lien, 100; withdrawal of juror, 240; wording of instructions, 360.
 Trover and Conversion, natural gas, 460; sale of securities, 440; title to maintain, 360; value of converted stock, 220.
 Trustee, shares of stock, 80.
 Trusts, alienation of life tenant, 280; burden of enhancing rental value; charges against for procuring letters with will annexed, 340; construction of will, 100; costs of trustee in defending ejectment suits, 80; creation by parol, 460; enforcement of parol trust, 460; express trust 220; evidence to establish, 320; foreign corporations, 160; furnishing consideration for conveyance, 80; grounds for removing co-trustee, 340; husband and wife, 220; husband and wife, 460; judicial sale, 100; legacies to minors, 380; impairment of funds, 360; implied power to sell real estate, 300; implied trust, 200; income, 200; parties in suit to recover damages, 240; parol evidence, 320; payment of annuities from corpus of estate, 360; payment to guardian of incompetent beneficiary, 100; property acquired by attorney adverse to client, 120; resulting trusts, 180; resulting trusts, 460; rights as affected by laches, 360; substituted trustee, 360; stock dividends, 460; sufficiency of evidence to establish, 320; termination, 200; transactions with beneficiaries, 500; trespass to try title, 380; trustee ex maleficio, 220; trustee purchasing interest in trust property, 240; unincorporated church, 280; validity of provision of will, 340; wife's loan to husband, 140.
 Turnpikes and Toll Roads, acquisition by county, 100.
 United States, jurisdiction of federal courts, 160; use of article patented by government employee, 360.
 Usury, contract to pay on stock, 280; fraud on bank, 220; recovery of money paid, 240; voidable contract, 100.
 Vendor and Purchaser, breach of contract for sale of land, 300; condition as to approval of title, 480; constructive notice, 460; contract to sell land, 400; defective title, 220; failure to discharge a note, 480; failure to make title, 260; homestead, 100; marketable title, 320; mutual covenants, 120; negotiations contemplating written contract, 120; parol modification of written contract, 260; recovery of money, 220; refusal to perform, 400; remedies where time is the essence of the contract, 40; sale of real estate, 200; specific performance, 180, 280, 440; subsequent vendor as affected by vendor's lien, 40; Sunday the last day of option period, 160; tax liens, 140; undue influence, 260; vendor's lien, 460.
 Venue, assignment of claim, 100; boundaries, 210. Verdict, direction, 320; review of facts, 180; technical errors, 460.
 Warehousemen, duty to remove goods to safe place, 220.
 Warranty, bountiful lands, 400; sufficiency of complaint, 100.
 Waters and Water Courses, breach of water works franchise, 60; contract to supply water, 300; defection of current, 440; deprivation of riparian owners, 460; discharge of surface water on adjoining land, 320; diversion of stream, 360, 400; enforcing rule of water company, 440; failure to furnish water for irrigation, 40; fire protection, 280; irrigation, 200, 300, 500; liability of boom owner for damages to mill, 280; negligence causing injury to mill, 500; overflow, 200, 480; railway embankment causing inundation of land, 340; riparian rights, 300; rules respecting surface water, 120; variance, 200.
 Weapons, carrying a pistol, 240; travelers, 100.
 Wharves, injury to vessel from broken spike, 120.
 Wills, agreement to devise, 100; bequest of income of estate, 380; bequest or devise, 160; burden of proving contract to bequeath property, 320; burden of proving undue influence, 140, 260; conditional devise, 340; conditions against marriage, 320; construction, 220, 240, 260, 460; contest, 220, 280, 340, 440; contingent legacies, 380; contingent remainders, 280; death of sole beneficiary before testatrix, 160; declaration of testator, 160; devise of land in another State, 120; divorce subsequent to making, 300; election by widow, 300, 320; estate devised, 440; execution, 440; intent of testator, 140, 280; loss of spoliated will, 260; mental capacity, 100, 340, 400; nature of estate devise, 160; perpetuities, 400; pleading, 180; precatory trust, 440; proof of attestation, 480; provision in lieu of dower, 480; residuary clause, 500; resulting trust, 340; revocation of joint will, 160; rights of infant to redeem from tax sale, 160; rights to claim under will, 460; sale of land, 300; scope of bequest of household goods, 220; signature, 160; specific and distributive legatees, 360; suit by legatees, 360; testamentary capacity, 160, 360; undue influence, 160; unnatural disposition of property, 160; validity of testamentary instrument, 60; who a legal representative, 240; words creating trusts, 260, 320.
 Witnesses, account stated, 360; act of God, 340; admission of evidence, 120; answering incriminating questions, 180; applicability of rule "falsus in uno falsus in omnibus," 260; competency, 400, 480; confidential relations, 280; contradictory evidence to party's own witness, 60; credibility, 100, 140, 160; cross-examination, 160, 220, 260, 300, 340, 440, 460, 480; defendant as a witness, 460; discretion in allowing questions, 260; donatio causa mortis, 380; effect of impeachment, 280; employer's liability insurance, 160; evidence of reputation, 160; examination by judge, 340; husband and wife, 220; impeachment, 140, 160, 200, 320, 360, 380, 400; incriminating evidence, 320; privileged communication, 60, 180; proper questions, 200; prosecution for using abusive language, 100; refreshing memory, 160, 300, 360; refusing recall for further cross questioning, 160; right to impeach own witness, 440; testimony of physician, 160; transactions with decedents, 260, 320, 480; value of land in condemnation proceedings, 380.
 Work and Labor, agent's contract in excess of authority, 140; clothing furnished, 200; cropping contract, 100; form of action to recover for services, 320; value of plans and specifications, 160; value of services, 160.

